F. & D. No. 4656.
I. S. No. 16930-d.

Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2501.

Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Eastern Dispensing Co. Plea of guilty. Fine, $20.

ADULTERATION AND MISBRANDING OF BUTTER.

On March 7, 1913, the United States Attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of said District an information against the Eastern Dispensing Co., a corporation doing business in the District of Columbia, alleging the sale by said defendant, in the District aforesaid, on February 2, 1912, in violation of the Food and Drugs Act, of a quantity of butter which was adulterated and misbranded. The product bore no label but was served as part of a meal and in response to a request for butter.

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Refraction at 40° C., 51.3; Reichert-Meissl No., 0.34. Adulteration of the product was alleged in the information for the reason that another substance, to wit, oleomargarine, had been substituted in whole or in part for the genuine article, namely, butter. Misbranding was alleged for the reason that the product was an imitation of and was offered for sale and sold under the distinctive name of another article of food, to wit, butter.

On March 7, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $20.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2501—13

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F. & D. No. 4706.
I. S. No. 19863-d. Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2502.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Platt's Co. Plea of guilty. Fine, $20.

ADULTERATION AND MISBRANDING OF BUTTER.

On March 7, 1913, the United States Attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of said District an information against Platt's Co., a corporation doing business within the District of Columbia, alleging the sale by said defendant, in the District aforesaid, on April 26, 1912, of a quantity of so-called butter which was adulterated and misbranded in violation of the Food and Drugs Act. The product bore no label but was sold as butter.

Analysis of a sample of the product in the Bureau of Chemistry of this Department showed the following results: Foam test, no foam; melting test, cloudy; refraction at 40° C., 52.5; Reichert-Meissl No., 0.848. Adulteration of the product was alleged in the information for the reason that another substance, to wit, oleomargarine, had been substituted in whole or in part for the genuine article of food, namely, butter. Misbranding was alleged for the reason that the product was an imitation of and was offered for sale and sold under the distinctive name of another article of food, to wit, butter.

On March 7, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $20.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2502—13

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F. & D. No. 162–c. Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2503.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. John W. Engle. Plea of guilty. Fine, $10.

ADULTERATION OF CREAM.

On March 10, 1913, the United States Attorney for the District of Columbia, acting upon a report by the Health Officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of said District an information against John W. Engle, of Frederick, Md., alleging the sale by said defendant, at the District aforesaid, in violation of the Food and Drugs Act, on February 12 and 14, 1913, of a quantity of cream which was adulterated.

Adulteration of the product was alleged in the information for the reason that a valuable constituent thereof, to wit, butter fat, had been left out and abstracted in whole or in part.

On March 10, 1913, the defendant entered a plea of guilty to the information and the court imposed a fine of $10.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2503—13

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F. & D. No. 163-c. Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2504.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Charles B. Young. Plea of guilty. Fine, $5.

ADULTERATION OF CREAM.

On March 10, 1913, the United States Attorney for the District of Columbia, acting upon a report by the Health Officer of said District, authorized by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Charles B. Young, Frederick, Md., alleging the sale by said defendant, at the District aforesaid, on February 1, 1913, of a quantity of cream which was adulterated in violation of the Food and Drugs Act. The product bore no label.

Adulteration of the product was alleged in the information for the reason that a valuable constituent thereof, to wit, butter fat, had been left out and abstracted in whole or in part.

On March 10, 1913, the defendant entered a plea of guilty to the information and the court imposed a fine of $5.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2504—13

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F & D. No. 2894.
I. S No. 13382-c.

Issued July 26, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2505.

(Given pursuant to section 4 of the Food and Drugs Act.

U. S. v. Morgan-Abbot-Barker Co. Plea of guilty. Fine, $25 and costs.

ADULTERATION AND MISBRANDING OF VINEGAR.

On December 23, 1913, the United States Attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Morgan-Abbot-Barker Co., a corporation, Louisville, Ky., alleging shipment by said defendant, in violation of the Food and Drugs Act, on March 11, 1911, from the State of Kentucky into the State of Georgia, of a quantity of vinegar which was adulterated and misbranded. The product was labeled: "The Morgan-Abbot-Barker Co. Distrs. Incorporated. Pure Apple Lion Brand Vinegar, Louisville, Kentucky."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Solids (grams per 100 cc), 2.10; polarization direct, −2.2° V.; reducing sugars direct (grams per 100 cc), 0.75; reducing sugars invert (grams per 100 cc), 0.79; alcohol (per cent by volume), 0.17; ash (grams per 100 cc), 0.41; alkalinity of water-soluble ash (cc N/10 acid per 100 cc), 43.4; water soluble P_2O_5 (mg per 100 cc), 12.1; water insoluble P_2O_5 (mg per 100 cc), 9.0; total acid as acetic (grams per 100 cc), 4.01; fixed acids as malic (grams per 100 cc), 0.02; alcoholic precipitate (grams per 100 cc), 0.18; glycerol (grams per 100 cc), 0.119. Adulteration of the product was alleged in the information for the reason that a substance had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality, to wit, that a dilute solution of acetic acid or distilled vinegar, containing foreign mineral matter, prepared in imitation of apple cider vinegar, had been mixed and packed in the product and had been substituted for pure apple vinegar in part in said product. Misbranding was alleged for the reason that the label set forth above bore a statement regarding the ingredients and

substances contained in the product, which statement was false and misleading, in that the product was not pure apple vinegar but, on the contrary, was a dilute solution of acetic acid or distilled vinegar containing foreign mineral matter, prepared in imitation of apple cider vinegar.

On October 11, 1912, the defendant company entered a plea of guilty to the information and the court imposed a fine of $25 and costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

2505

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F & D. No. 3023.
I. S. Nos. 12656-c, 12658-c.
Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2506.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Charles Bang. Plea of guilty. Fine, $25.

ADULTERATION AND MISBRANDING OF SPIRITS OF TURPENTINE.

On June 26, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said District an information against Charles Bang, New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on June 3, 1911, from the State of New York into the State of Connecticut, of a quantity of spirits of turpentine which was adulterated and misbranded. The product was labeled: "Pure Spirits Turpentine."

An analysis of two samples of the product by the Bureau of Chemistry of this Department showed that each contained at least 4 per cent of mineral oil. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, turpentine, and it differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of shipment and investigation in that it contained a mineral oil, which is not one of the ingredients of turpentine, according to the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia. Misbranding was alleged for the reason that the label set forth above, regarding the product and the ingredients and substances contained therein, was false and misleading, and said label was calculated to deceive and mislead the purchaser thereof, in that it would indicate that the product was pure spirits of turpentine, whereas, in truth and in fact, it was not so, but was a mixture of turpentine and mineral oil.

On October 28, 1912, the defendant entered a plea of guilty to the information and the court imposed a fine of $25.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2506—13

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F. & D. No. 3036.
S. Nos. 12657-c and 12659-c. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2507.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Sarah V. B. DeForest and Cornelia C. Emaus (Barclay Naval Stores Co.). Plea of guilty. Sentence suspended.

ADULTERATION AND MISBRANDING OF SPIRITS OF TURPENTINE.

On June 26, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Sarah V. B. DeForest and Cornelia C. Emaus, doing business under the firm name and style of Barclay Naval Stores Co., New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on June 3, 1911, from the State of New York into the State of Connecticut, of a quantity of spirits of turpentine which was adulterated and misbranded. The product was labeled: "Pure Spirits Turpentine."

Analysis of samples of the product by the Bureau of Chemistry of this Department showed that each contained at least 4 per cent of mineral oil. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, turpentine, and it differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of shipment and investigation in that it contained a mineral oil, which is not one of the ingredients of turpentine, according to the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia. Misbranding was alleged for the reason that the label set forth above, regarding the product and the ingredients and substances contained therein, was false and misleading, and said label was calculated to deceive and mislead the purchaser thereof, in that it would indicate that the product was pure spirits of turpentine, whereas, in truth and in fact, it was not so, but was a mixture of turpentine and mineral oil.

On October 28, 1912, the defendants entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

98119°—No. 2507—13

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F. & D. No. 3216.
S. No. 1182.

Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2508.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 325 Cases of Tomato Pulp. Decree of condemnation by default. Product ordered destroyed.

ADULTERATION OF TOMATO PULP.

On November 17, 1911, the United States Attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on August 15, 1912, an amended libel, for the seizure and condemnation of 325 cases, each containing 4 dozen cans of tomato pulp, remaining unsold in the original unbroken packages and in possession of the Smith Bros. Co. (Ltd.), New Orleans, La., alleging that the product had been shipped on or about September 26, 1911, by S. J. Seneca, Havre de Grace, Md., and transported from the State of Maryland into the State of Louisiana, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: (On cases) "4 Dozen No. 1—Red Cross Brand Tomato Pulp—Trade Mark—Patent 1876—S. J. Seneca, Havre de Grace, Maryland." (On cans) "Red Cross Brand (Picture of Tomato)—for soup—S. J. Seneca, Havre de Grace, Maryland—Tomato Pulp for soups, sauces, gravies, etc. Made from Tomatoes, Tomato Trimmings, and pieces of tomatoes, warranted Tomato Pulp (Red Cross) Trade Mark, Patented 1876—Red Cross Brand."

Adulteration of the product was alleged in the amended libel for the reason that it contained a very large and excessive and abnormal number of organisms, bacteria, yeasts, spores, and mold filaments, which organisms and bacteria were dead, and said product contained pieces of decayed tomato tissue and products of decomposition of tomato pulp, and consisted of filthy, decomposed, and putrid vegetable substances.

On January 10, 1913, a default judgment of condemnation and forfeiture was entered, the court finding that the product consisted

of filthy, decomposed, and putrid vegetable substances. It was ordered that said product should be destroyed by the United States marshal.

B. T. GALLOWAY,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *June 12, 1913.*

2508

F. & D. Nos. 3794 and 3795.
I. S. Nos. 12582-c and 12594-c. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2509.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Indiana Milling Co. Plea of guilty. Fine, $50 and costs.

MISBRANDING OF KENNEBEC MIXED FEED.

At a stated term of the District Court of the United States for the District of Indiana the grand jurors of the United States within and for said district, acting upon a report by the Secretary of Agriculture, returned an indictment against the Indiana Milling Co., a corporation, Terre Haute, Ind., alleging shipment by said company, in violation of the Food and Drugs Act, on March 7, 1911, and March 14, 1911, from the State of Indiana into the State of Rhode Island, of consignments of Kennebec Mixed Feed, which was misbranded. The product was labeled: "100 lbs. Kennebec Mixed Feed. Composition Wheat, Bran, Ground Corn, Cob Meal, Protein 10.00 to 10.50 per cent., Fat, 3.00 to 4.00 per cent., Fiber 12.00 to 14.00 per cent. Sold by J. E. Soper Co., Boston, Mass."

Analysis of a sample of the product from the first shipment, made by the Bureau of Chemistry of this Department, showed the following results: Moisture, 10.24 per cent; ether extract, 2.84 per cent; protein, 8.69 per cent; crude fiber, 14.56 per cent. Misbranding of this product was charged in the indictment for the reason that the statement that it contained 10 to 10.5 per cent protein so printed on the label and attached to the sacks regarding the ingredients and substances contained therein was false and misleading in that the ingredients and substances contained therein did not contain 10 to 10.5 per cent protein, but in truth and in fact contained a much smaller percentage of protein, to wit, 8.69 per cent.

Analysis of a sample from the second shipment made by the Bureau of Chemistry of this Department showed the following results: Moisture, 9.68 per cent; ether extract, 2.76 per cent; protein, 8.44 per cent; crude fiber, 15.30 per cent. Misbranding of this product was charged in the indictment for the reason that the statement that it contained 10 to 10.5 per cent protein and 12 to 14 per cent fiber,

so printed on the label and attached to the sacks, regarding the ingredients and substances contained therein, was false and misleading, in that the ingredients and substances contained in the sacks did not contain 10 to 10.5 per cent protein and 12 to 14 per cent fiber, but in truth and in fact contained a much smaller percentage of protein, to wit, 8.44 per cent of protein, and in truth and in fact contained a greater percentage of fiber, to wit, 15.3 per cent of fiber.

On March 3, 1913, the defendant company withdrew its former plea of not guilty and entered a plea of guilty to the indictment and the court imposed a fine of $50 and costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 12, 1913.*

2509

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F. & D. No. 4828.
S. No. 1590.

Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2510.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 200 Cases Crushed Oranges. Decree of condemnation by consent. Goods released on bond.

ADULTERATION AND MISBRANDING OF CRUSHED ORANGES.

On or about November 21, 1912, the United States Attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases each containing 4 dozen cans of crushed oranges remaining unsold in the original unbroken packages and in possession of Wolpert & Davis, Minneapolis, Minn., alleging that the product had been shipped on September 3, 1912, by A. L. Weisenburger, Chicago, Ill., and transported in interstate commerce from the State of Illinois into the State of Minnesota, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: (On cases) "4 Doz. Crushed Oranges—The Orange Canning Co., Los Angeles, Cal.—Orange Products—Trade Mark (Orange held between heads of two buffaloes)." (On cans) On paper wrapper around can—"Crushed Oranges—Two Gene's Brand—(Design, bunch of three oranges)—The Orange Canning Co.—Los Angeles and Pomona, California—Special Notice. Crushed Oranges may be put up by anyone but we alone can 'Crushed Oranges' that are not bitter. For additional protection to the consumer, the top of each can of our crushed oranges bears our 'trade mark,' which is an orange held between two buffalo heads, known as 'Two Gene's Brand.'—Crushed oranges are crushed from select California tree-ripened oranges. By our process of canning the oil cuticles of the peel are unaltered, and, together with the pulp and juice of the best oranges, is the most palatable fruit on the market. We add no preservatives, no sugars, of any kind, but sugar or water may be added desirable to the taste. These oranges are more conveniently eaten and are better than

oranges in whole form, costing only one-half as much. Directions * * *. Guaranteed under the Food and Drugs Act of June 30, 1906." (On small seal over ends of wrapper)—"The Orange Canning Co., Los Angeles, Cal.—Orange Products—(Design, orange held between two buffalo heads)."

Adulteration of the product was alleged in the libel for the reason that a valuable constituent thereof, to wit, the native juice of the orange, had been abstracted. Misbranding was alleged for the reason that the product was labeled "Crushed oranges are crushed from select California tree ripened oranges—(with pictorial design of whole ripened orange)," when, in truth and in fact, it was composed of orange residue from which the native juice of the orange had been abstracted, being so labeled and branded as to deceive and mislead the purchaser, and it was further misbranded in that the label bore a statement, design, and device regarding the ingredients and substances contained therein, to wit, "By our process of canning the oil cuticles of the peel are unaltered, and together with the pulp and juice of the best oranges, is the most palatable fruit on the market," which said statement, design, and device was false and misleading, in that it purported to represent that the product contained the entire orange, whereas, in truth and in fact, it contained only the orange residue after the native juice had been abstracted.

On March 3, 1913, the said Wolpert & Davis, claimant, having consented thereto, a decree of condemnation and forfeiture was entered and it was ordered that the product should be returned to said claimant upon payment of all costs, amounting to $16.75, and the execution of bond in the sum of $500 in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 13, 1913.*

2510

F. & D. Nos. 1652 and 1653.
I. S. Nos. 9–b and 1518–a. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2511.

(Given pursuant to section 4 of the Food and Drugs Act.)

SUPPLEMENT TO NOTICE OF JUDGMENT NO. 1891.

United States v. J. L. Stephens Co. Judgment of lower court affirmed by the Circuit Court of Appeals for the Sixth Circuit.

MISBRANDING OF A DRUG HABIT CURE.

On February 1, 1912, the Dr. J. L. Stephens Co. sued out a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit to set aside a judgment rendered and sentence pronounced upon an information charging said defendants with the shipment of two consignments of drug habit cure from the State of Ohio into the District of Columbia which were misbranded in violation of the Food and Drugs Act.

On March 13, 1913, proceedings on the writ of error having come on for hearing, judgment was affirmed by said Court of Appeals, as will more fully appear from the following decision rendered by the court (Warrington and Denison, Circuit Judges, and Cochran, District Judge):

PER CURIAM. This is a proceeding on writ of error to set aside a judgment rendered and sentence pronounced upon an information. The information contained two counts, and was based on the Pure Food and Drugs Act of June 30, 1906. The plaintiff in error, hereafter called defendant, is an Ohio corporation doing business and having its principal office at Lebanon, Ohio. It there maintains a sanatorium, where persons addicted to the drug and liquor habits are treated; and patients are also treated away from the institution through correspondence. According to an agreed statement of facts, the defendant shipped two boxes of medicine by railway from Lebanon, Ohio, to Washington, D. C.; one shipment was made December 19, 1908, and the other, October 22, 1909; each box contained 18 bottles of the medicine, and all the bottles contained alcohol as one of the ingredients, and some contained as another ingredient morphine in varying and diminishing quantities. The bottles were labeled "Maplewood Sanatorium. Ledger M. 45. 3,609. Directions: Take half a

tablespoon four times a day and as directed." The President of defendant, who was also its Medical Director, has charge of the patients at the Sanatorium, and also of those who are treated at a distance through correspondence. He is a graduate of Columbia University, New York City, and has had a long and varied experience; indeed, he is a specialist in the treatment of patients addicted to drug and liquor habits. In the agreed statement of facts this appears:

"It is a recognized fact by the medical profession generally that in the treatment of diseases, especially the drug habit, it is an important, and in most cases a vital factor, that the patient should not know the composition of the medicines given in such treatment."

This agreed fact is offered as a defense to the charge that the medicine in question was mislabeled and misbranded, because correct labeling and branding would defeat the object of the treatment. The defendant has no proprietary medicines and does not offer or sell any medicines to the general public. In every case where a patient applies for treatment, either at the Sanatorium, or at the patient's home, a history of the case is obtained from the patient, a diagnosis in each instance is made, and a prescription prepared by the Medical Director to meet the needs of the particular case.

The cause was submitted upon the agreed statement of facts alluded to, and each party asked for a directed verdict. The case was fully considered by the trial judge, who directed a verdict in favor of the Government and sentenced the defendant to a fine of $50 and costs of prosecution. Among the questions determined was, whether it was necessary to allege that the two boxes or packages containing the bottles of medicine were misbranded, the information having simply charged that each of the bottles contained in such packages was misbranded. The court held that the word "package," as used in the act, "means the package which passes into the possession of the public, of the real consumer; and that the words, 'original unbroken package,' relate * * * to the package in the form in which it is received by the vendee or consignee."

Another question determined was:

"* * * whether the Pure Food and Drugs Act deals with articles other than those which are the subject of bargain and sale. It is urged that the medicine or prescription is a mere incident of the services rendered, and that it is not therefore to be treated as an article of commerce."

Upon this question the court held:

"As was said in the Hipolite Egg Company case (220 U. S. 45), the object of the law is to keep adulterated and misbranded articles out of the channels of interstate commerce, and it is immaterial whether the medicine or prescription which was furnished by the defendant company was the mere incident of the employment, or its primary object. It is enough to know that the medicine or prescription was sent through the channels of interstate commerce, and misbranded, within the terms of the Act."

Still another question was determined:

"Is a reputable, regularly licensed, practicing physician, residing in Ohio, who prescribes for a person beyond the limits of the state and transmits to such person through the channels of interstate commerce the medicine prescribed, subject to the penalities of the law, if the medicine so prescribed and so passing through the channels of interstate commerce, contains morphine—the bottle, box, container, or package enclosing the medicine so prescribed and to be taken by the patient not being so labeled as to show the presence of the drug?"

We do not find it necessary to pass upon the last question stated. The Medical Director did not in his individual capacity prescribe or furnish the medicine for the persons served in this case. His acts were performed for the corporation, and in legal contemplation by it (*State* v. *Laylin*, 73 O. S., 90, 100). We agree with Judge Sater in his conclusions upon the other two questions, and so must affirm the judgment.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *May 21, 1913.*

2511

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F. & D. No. 4905.
S. No. 1626. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2512.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 200 Sacks of Corn Chops. Decree of condemnation by default. Goods ordered sold.

ADULTERATION AND MISBRANDING OF CORN CHOPS.

On or about December 23, 1912, the United States Attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 sacks of corn chops remaining unsold in the original unbroken packages and in possession of the Augusta Mercantile Co., Augusta, Ark., alleging that the product had been shipped on November 25, 1912, by R. J. House & Co., Kansas City, Mo., and transported from the State of Missouri into the State of Arkansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "100 lbs. Corn Chops, Mnf. by Western Grain Co., Kansas City, Mo. Analysis Protein 9%, Fat 3%, Crude Fiber 3½%, carbo-hydrates, 70%———Ingredients ground corn only."

Adulteration of the product was alleged in the libel for the reason that a substance, to wit, sand, had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality and strength; and in that a substance, to wit, sand, had been substituted in part for the product. Misbranding was alleged for the reason that the product was labeled so as to deceive the purchaser, being labeled "Corn Chops, Ingredients ground corn only," whereas, in fact, the product contained added sand, and was further misbranded in that the packages containing it and the labels thereon bore a statement regarding the ingredients and substances contained therein which was false and

misleading, said packages, and each of them, being labeled "Corn Chops, Ingredients ground corn only," when in fact each of the packages contained added sand.

On March 12, 1913, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be sold by the United States marshal.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 14, 1913.*

2512

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F. & D. Nos. 799, 1423, 1424.
I. S. Nos. 21365–a, 11948–b, 8798–b. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2513.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Eugene W. Durkee and James M. French. Plea of guilty. Fine, $150.

MISBRANDING OF LEMON EXTRACT; MISBRANDING OF VANILLA EXTRACT; MISBRANDING OF SALAD DRESSING AND MEAT SAUCE.

On August 8, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district informations against Eugene W. Durkee and James M. French, doing business under the firm name and style of E. R. Durkee & Co., New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act—

(1) On January 29, 1909, from the State of New York into the State of Texas of a quantity of lemon extract which was misbranded. The product was labeled: "Durkee's Guantlet Brand Flavoring extracts. Lemon. Manufactured by E. R. Durkee & Co. New York and warranted absolutely pure. U. S. Serial No. 5061; 1½ Fluid Oz. Net."

Measurement of samples of the product in the Bureau of Chemistry of this Department showed that they were not truly branded as to their volume, the shortage found being 10.6 per cent. Misbranding of the product was alleged in the information for the reason that it was in package form and the contents were not correctly stated on the outside thereof in terms of weight and measure but upon said package was the statement that the product was 1½ fluid ounces net by measure, whereas, in truth and in fact, it was less than 1½ fluid ounces net by measure. Misbranding was alleged for the further reason that the product was branded as set forth above so as to deceive the purchaser

or purchasers, in that the container and label of the product bore a statement regarding it and the ingredients and substances contained therein which was false and misleading, in that its contents were stated to be of the weight and measure of 1½ fluid ounces, whereas, in truth and in fact, the contents were of less weight and measure than 1½ fluid ounces.

(2) On December 30, 1909, from the State of New York into the State of Pennsylvania, of a quantity of vanilla extract which was misbranded. The product was labeled: "E. R. Durkee & Co.'s Extract Vanilla Contains 55% alcohol. Warranted absolutely pure. Warranted perfectly pure. E. R. Durkee & Co. N. Y. Trade Mark Registered. 1½ fluid ounces net; U. S. Serial No. 5061."

Measurement of samples of the product in said Bureau of Chemistry showed the average content of 4 dozen bottles to be 4 per cent short measure. Misbranding of the product was alleged in the information for the reason that it was labeled as set forth above so as to deceive and mislead the purchaser or purchasers thereof, in that the package, container, and label of the product bore a statement regarding it and the ingredients and substances contained therein which was false and misleading, in that the contents were stated to be of the weight and measure of 1½ fluid ounces, whereas, in fact, the contents were of less weight and measure than 1½ fluid ounces.

(3) On March 20, 1909, from the State of New York into the State of Ohio, of a quantity of salad dressing and meat sauce which was misbranded. The product was labeled: "Durkee's Salad Dressing and Meat Sauce (Trade Mark) U. S. Serial No. 5061. A Rich, Wholesome and delicious Mayonnaise Dressing for Lobster, Chicken and All Other Salads. And a Delicious Sauce for Cold Meats, Pickled Salmon, &c. Prepared with Great Care, only from the Purest and Choicest Condiments Obtainable. None genuine without Trade Mark and Signature of E. R. Durkee & Co. 8 Oz. Net Weight. Does not contain now and never has contained any Preservative of any sort. Shake hard before using. It is contrary to all Food Laws to adulterate contents of this Bottle or to refill. E. R. Durkee & Co."

Analysis of a sample of the product by the said Bureau of Chemistry showed the following results: Residue on drying, 60.54 per cent; extract with absolute alcohol, 51.81 per cent; ash, 6.87 per cent; salt, 6.01 per cent; proteids, 4.20 per cent; acids, as acetic, 1.80 per cent; starch, none visible; color, turmeric present; Halphen test for cottonseed oil, negative; quantity, declared net weight, 8 ounces; quantity found, $7\frac{9}{16}$ ounces; $7\frac{9}{16}$ ounces; $7\frac{3}{16}$ ounces; bottles not full. Misbranding of the product was charged in the information for the reason that it was labeled as set forth above so as to deceive the purchaser or purchasers, in that the container and label of the product bore a state-

ment regarding it and the ingredients and substances contained therein which was false and misleading, in that its contents were stated to be of the weight of 8 ounces, whereas, in fact, the contents were of less weight than 8 ounces. Misbranding was alleged for the further reason that the product was in package form and the contents were not correctly stated on the outside of the package in terms of weight and measure but upon said package was the statement that the product was 8 ounces net by weight, whereas, in truth and in fact, it was less than 8 ounces net by weight.

On October 14, 1912, defendants having entered pleas of guilty to the informations, the court imposed fines aggregating $150, and suspended sentence upon the charge that the salad dressing and meat sauce was misbranded in that the contents of the package thereof were not correctly stated in terms of weight and measure.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 23, 1913.*

2513

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F. & D. No. 1803.
S. No. 638. Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2514.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 80 Barrels of Vinegar. Decree of condemnation by consent. Goods released on bond.

MISBRANDING OF VINEGAR.

On September 3, 1910, the United States Attorney for the District of New Hampshire, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 80 barrels of vinegar remaining unsold in the original unbroken packages and in possession of the Holbrook-Marshall Co., Nashua, N. H., alleging that the product had been shipped from the State of Massachusetts into the State of New Hampshire and charging misbranding in violation of the Food and Drugs Act. Thirty barrels of the product were labeled: "Strictly Pure—gals. Nectar Brand Sugar Vinegar—Guaranteed under the Food and Drugs Act—Put up for the Holbrook-Marshall Company, Nashua, N. H."; 20 barrels were labeled: "— gals. Pure White Vinegar Distilled Put up for the Holbrook-Marshall Company, Nashua, N. H."; and 30 barrels were labeled: "— gals. Cider Vinegar—Guaranteed under Food and Drugs Act—Put up for the Holbrook-Marshall Company, Nashua, N. H." On each barrel were stenciled figures representing the vinegar content.

Misbranding of the product was alleged in the libel for the reason that it was in package form and the contents were not correctly stated on the outside of the barrels.

On September 24, 1912, Arthur E. Rowse, Arlington, Mass., proprietor of the New England Vinegar Works, Boston, Mass., claimant, having admitted the allegations in the libel and consented to a decree,

judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be redelivered to said claimant upon payment of the costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 27, 1913.*

2514

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F. & D. No. 2164.
I. S. No. 19729-b.
Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2515.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. David Katzenstein and Solomon Katzenstein. Plea of guilty. Fine, $100.

ADULTERATION OF MACARONI COLOR.

On July 31, 1911, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the Circuit Court of the United States for said district an information against David Katzenstein and Solomon Katzenstein, copartners, doing business under the firm name of Star Extract Works, New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about May 6, 1910, from the State of New York into the State of Missouri of a quantity of macaroni color which was adulterated. The product was labeled: "Coal — Tar — Yellow Color — Macaroni Shade — Star Extract Works — Importers and Manufacturers of essential oils. Flavoring extracts and supplies, 205 Fulton St. New York."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the color to be naphthol yellow S. (S. & J. No, 4). No naphthol yellow (S. & J. No. 3) was found. Arsenic (expressed as metallic arsenic), parts per million, 26. Adulteration of the product was alleged in the information for the reason that it contained an added poisonous and deleterious ingredient which might render it injurious to health, to wit, arsenic, which arsenic was not a preservative applied externally in preparation of the product for shipment.

On October 14, 1912, defendants entered a plea of guilty to the information and each was fined $50.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 30, 1913.*

1634°—No. 2515—13

F. & D. No. 2684.
I. S. No. 47058–a.

Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2516.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Charles G. Dade. Tried to the court. Finding of guilty. Fine, $50.

ADULTERATION OF MILK.

On June 15, 1912, the United States Attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of said District an information against Charles G. Dade, Washington, D. C., alleging the sale by said defendant, on February 27, 1911, at the District aforesaid, in violation of the Food and Drugs Act, of a quantity of milk which was adulterated. The product bore no label.

An analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Temperature at time of collection, 44.6° F.; number of bacteria per cc on ordinary agar at 37° C., 24 hours, 4,500,000; number of bacteria per cc on ordinary agar at 25° C., 48 hours, 89,400,000; number of colonies of colon group per cc, 85,000; streptococci per cc, 10,000; acid colonies per cc, litmus lactose, innumerable. Adulteration of the product was alleged in the information for the reason that it consisted "in whole and in part of a filthy, decomposed and putrid animal and vegetable substance."

On June 19, 1912, the case having come on for trial before the court, without the intervention of a jury, a finding of guilty was made by the court, and a fine of $50 was imposed. Defendant thereupon, by his attorney, moved for a new trial, and on October 12, 1912, said motion was overruled, without comment, by the court. Thereafter defendant sued out a writ of error to the Court of Appeals of the District of Columbia to set aside the judgment rendered and

sentence pronounced by said Police Court, and on February 25, 1913, the case having come on for a hearing before said Court of Appeals, the judgment of the Police Court was affirmed by the Court of Appeals, as will more fully appear from the following opinion, delivered by the court (Van Orsdel, *J.*):

This case is here in error to the Police Court of the District of Columbia. Plaintiff in error was convicted of violating the following provision of the Pure Food and Drugs Act: "Sec. 7. That for the purposes of this Act, an article shall be deemed to be adulterated * * * in the case of food * * * Sixth. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter." 34 Stats. L., 770. The information charged him with unlawfully offering for sale and selling adulterated milk, "in that it did consist in whole and in part of a filthy, decomposed and putrid animal and vegetable substance."

The facts established by the evidence are that "On February 27, 1911, a pint bottle of milk was purchased from one of the defendant's wagons, and taken to the laboratory of the Bacteriological Bureau of the Health Department, where it was analyzed, and found to contain 4,500,000 bacteria on ordinary agar, thirty-seven degrees Centigrade, grown twenty-four hours, and 89,400,000 bacteria per cubic centimeter, on ordinary agar, twenty-five degrees Centigrade, grown forty-eight hours. It contained 83,000 bacteria per cubic centimeter of the colon group. It showed gas fermentation in one ten thousandth of a cubic centimeter, approximately fifteen drops and one streptococcus to one ten thousandth of a cubic centimeter.

It appears that the bacterium known as B. Coli or colon bacillus originates in and is a normal constituent of the colon of all warm blooded animals, is discharged in the excreta and found in milk as the result of fecal contamination. When present in milk, it always occurs from either direct or indirect fecal deposit therein; directly from carelessness in permitting particles of feces to get into the milk during the process of extracting the milk from the cow, or in handling it afterwards; indirectly, from dust, vegetation, water and air, where the bacillus is found,—originally derived, however, from animal feces. The evidence discloses the study of the science to be that colon bacillus is a vegetable formation originating in animal intestines, and nowhere else. It is not found in air, dust, water or vegetation under conditions indicating different origin or its original derivation from the substance with which it is thus associated. Under favorable conditions, colon bacillus will multiply and develop in milk with great rapidity. The present analysis in the light of the evidence reveals the presence of the colon bacillus to have resulted from a direct deposit of feces in the milk, due to uncleanly methods of handling the milk.

It appears that the streptococcus is associated frequently with the colon bacillus in the colon of warm blooded animals, and is discharged in the excreta. It is also found in diseased processes of animals,—in boils on human beings, or in abscesses in animals, and in diseased tissues and intestines. While milk may be perfectly sterile in the udder of a healthy cow, streptococci may be found in milk taken from a diseased udder. It, however, may be regarded as strongly conclusive that where colon bacilli and streptococci are found together in large numbers and under the circumstances here shown, they originate directly from fecal matter. They are not found in milk as it flows from a healthy animal. Their presence in milk, originally pure, indicates contamination from an outside source,—as to colon bacillus, always fecal contamination; and usually the same as to streptococcus. Streptococcus may also come from a diseased condition of the cow or from persons handling the milk, but its presence was not so accounted for in this case.

It also appears that the growth of bacteria invariably results in the chemical and natural decomposition of the substance in which they grow. Milk is an animal substance, and bacteria are a vegetable formation in the milk. The bacteria develop and die in rapid succession, causing natural decomposition. Colon baccilli and streptococci destroy the sugar in milk, which is broken up into various acids and gases, thus causing chemical decomposition. For example, sour milk is described as decomposed milk, and may be caused by

the action of bacteria. The decomposition of milk sugar into lactic acid is a chemical process that causes milk to sour.

This case was not prosecuted upon the assumption that bacteria, as living vegetable organisms, are in themselves either filthy, decomposed, or putrid; but upon the theory, as fully sustained by the evidence, that the bacteria constantly develop and die, causing filthy vegetable decomposition; that the colon bacilli and streptococci found in the milk establish the presence of fecal matter; that streptococci, especially, are a menace to health; that whether the streptococci came into the milk through fecal deposit, from a diseased condition of the cow or of those handling the milk, the vice is the same, and that these two groups of bacteria, especially, cause decomposition of the milk.

The Pure Food and Drugs Act is a police regulation enacted to conserve the public health. It will be construed liberally to meet the evils intended to be embraced within its provisions. United States *v.* Corbett, 215 U. S., 233; District of Columbia *v.* Gardiner, ——— App., D. C., ——— (Present Term); Galt *v.* United States, ——— App., D. C., ——— (Present Term). We are not unmindful of the rule that police regulations to be valid must be reasonable, necessary, and not unduly oppressive. The law-making power, in their enactment, takes into consideration the public sentiment of the community as a measure of the degree of regulation to which private property shall be subjected for the public good, and nowhere do the courts so completely reflect the side of public opinion as in deciding cases involving the exercise of the police power. Measures looking to the public welfare are no longer tested by the strict letter of the Constitution. Doubtless many modern expressions of the legislative will, in the exercise of its police power, would have been held unconstitutional if enacted at an earlier period. But public opinion, keeping pace with an advancing civilization, is the progressive factor which calls for an enlarged invasion of private rights for the public good, and which prompts courts to give greater elasticity to Constitutional limitations. In flexibility of construction lies the possibility of progress and the vitality of the Constitution. Therefore, some of the technical distinctions cited to be applied by counsel for plaintiff in error in construing the Act before us may be disposed of by the suggestion that the food offered for sale in a filthy, decomposed and putrid condition, caused either from an inherent condition, or external substance; or "consisting of" or containing filthy, decomposed or putrid matter; or containing a foreign substance, neither filthy, decomposed nor putrid in itself, but which causes the food from contact with it to decompose or become filthy or putrid, will be held to come within the Act. It is beyond dispute that the milk, when taken from the wagon of plaintiff in error in the condition in which it was being sold to his customers, was both filthy and decomposed.

It is urged that since it is impossible to produce milk entirely free from bacteria, the statute imposes a duty impossible of performance, and cannot, therefore, be applied to milk; or, if possible of performance, it could only be complied with at so great a cost as to result in the destruction and confiscation of the business. It is not clear from the evidence that the enforcement of the Act will produce this result. The present case does not present this difficulty, except in theory; since the contamination was so great as to place it within the statute beyond the domain of speculation. Not only did the milk in question contain bacteria of the colon group, but, as incident thereto, fecal matter, all of which, it appears, may be eliminated by the adoption of cleanly methods in handling the milk. In fact, it appears that samples from the dairy of plaintiff in error have been analyzed, which were free from bacteria of the colon group. One witness testified that he "has encountered milk, samples of raw milk and samples of pasteurized milk, free from bacteria of the colon; has seen samples of defendant's that did not contain them, milk sold as raw milk and analyzed on that assumption."

We are not dealing with a regulation relating to milk alone, but with an act generally regulating the sale of food products. Milk is a food product; and, if found to be impure, it will be held to be "adulterated" within the provisions of the Act. There is evidence that it is impossible to produce raw milk which does not contain bacteria; that a limited number of bacteria in milk are practically harmless, and also that certain kinds of bacteria are, in fact, harmless. It is unnecessary to decide whether, under such circumstances, milk would be held to come within the Act, since in the present case, adulteration is clearly established. The dividing line between pure and impure or

adulterated food is in each instance a question of fact; but, because of the scientific distinctions involved, and the impossibility of producing raw milk entirely free from bacteria, it may be much more difficult of ascertainment in the case of milk than of other food products. Owing to the great difficulty which may be encountered in justly enforcing the law, in the absence of a fixed standard defining what is marketably pure and impure milk, in a case where the adulteration consists alone in the presence of comparatively small numbers of so-called harmless bacteria, it may well be that Congress should give attention to this subject, as has been done in many of the States, and establish a fixed standard for marketable milk, whereby milk found to contain a greater number of bacteria than that fixed by the act should come within the condemnation of the law. With the fact scientifically demonstrated that contaminated milk is a dominating factor in the propagation of tuberculosis, typhoid fever, scarlet fever, diphtheria, infantile diarrhea, and other diseases, the subject, in importance, is one of the first magnitude.

The judgment is affirmed with costs, and it is so ordered.

Affirmed.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *May 21, 1913.*

2516

F. & D. No. 2764.
I. S. No. 11016–c.

Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2517.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Joseph Giachino. Plea of guilty to first count of information. Fine, $10. Second count nolle prossed.

ADULTERATION AND ALLEGED MISBRANDING OF COGNAC.

On June 26, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in two counts against Joseph Giachino, doing business under the name and style of French-Italian Wines, Liquors and Cordials Importing Co., New York, N. Y., alleging shipment by said defendant, on October 20, 1910, from the State of New York into the State of Ohio of a quantity of so-called cognac which was adulterated and alleged to have been misbranded in violation of the Food and Drugs Act. The product was labeled: "Cognac. Fin Vieux Marqu d'Armoiries. Grande Fine Champagne."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Proof, 82.1°; solids, 357.0; acids, total, 22.0; esters, 2.2; aldehydes, 2.0; furfural, 0.0; fusel oil, 3.2; color, total, 9.8°; color insoluble, water, 0.0; color insoluble, amyl alcohol, 62.5 per cent; residue from distilling, appearance of caramel or prune juice; no aging indicated; tastes of caramel, etc.; solids, appearance and taste of caramel. (Except when otherwise indicated, the determinations are expressed as parts per 100,000, 100 proof.) Adulteration of the product was alleged in the first count of the information for the reason that a certain article other than cognac, to wit, a highly rectified spirit, had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality and strength, and in that a highly rectified spirit had been substi-

tuted in part for the genuine article, cognac. Misbranding was alleged in the second count of the information for the reason that the label set forth above regarding the product and the ingredients and substances contained therein was false and misleading and was calculated to deceive and mislead the purchaser thereof, in that said label would indicate that the product was cognac, whereas, in truth and in fact, it was not cognac but was an imitation brandy consisting for the most part of a highly rectified spirit and water with coloring and flavoring matter.

On October 28, 1912, the defendant entered a plea of guilty to the first count of the information charging adulteration and the court imposed a fine of $10. The second count of the information charging misbranding was nolle prossed.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 30, 1913.*

2517

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F. & D. No. 2839.
I. S. No. 1092–c.
Issued August 22, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2518.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Rockhill & Vietor. Plea of guilty. Sentence suspended.

ADULTERATION OF OIL OF THYME.

On June 26, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Clayton Rockhill and Carl Vietor, doing business under the firm name and style of Rockhill & Vietor, New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on July 25, 1910, from the State of New York into the State of Massachusetts, of a quantity of oil of thyme which was adulterated. The product bore no label but was sold and shipped as oil of thyme.

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Specific gravity at 25° C., 0.9086; phenols, 13.5 per cent; rotation, 1° 12′; no official phenol; soluble in 1½ volumes 80 per cent alcohol; soluble in one-half volume 95 per cent alcohol. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia official at the time of shipment and investigation, to wit, oil of thyme, and it differed from the standard of strength, quality, and purity as determined by the test laid down in said United States Pharmacopœia, in that said Pharmacopœia provided as a test for oil of thyme that it should contain not less than 20 per cent by volume of phenols, whereas the product contained less than 20 per cent by volume of phenols, to wit, 13.5 per cent by volume of phenols.

On October 8, 1912, defendants entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1913.*

1630°—No. 2518—13

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F. & D. Nos. 3173 and 3174.
I. S. Nos. 19220 and 19221–c. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2519.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Quinine Whisky Co. Plea of guilty. Fine, $25 and costs.

MISBRANDING OF JUNIPER BERRY GIN.

At a stated term of the District Court of the United States for the Western District of Kentucky the grand jurors of the United States within and for said district, acting upon a report by the Secretary of Agriculture, returned an indictment against the Quinine Whisky Co., a corporation, Louisville, Ky., alleging shipment by said defendant, in violation of the Food and Drugs Act, on May 4, 1911, from the State of Kentucky into the State of Ohio, of two consignments of so-called Juniper Berry Gin which was misbranded. The product was labeled: "Pure Distilled Juniper Berry * * * * Juniper Berry Gin—Trade Mark Registered Gin * * * The Quinine Whisky Co., Louisville, Ky. * * * Pure Distilled Gin * * * * *" Blown in bottle: "Juniper Berry Gin—A Diuretic. For Kidney Trouble * * * Juniper Berry Gin Bottled By Quinine Whisky Co., Louisville, Ky. * * *"

An analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Sample No. 1, alcohol, 39.4 per cent by volume; sample No. 2, alcohol, 39.56 per cent by volume. Misbranding of the product was charged in the indictment for the reason that the label thereon failed to bear a statement of the quantity or proportion of alcohol contained in each of the packages, those in the first consignment containing 39.4 per cent of alcohol and in the second consignment, 39.56 per cent of alcohol by volume.

On March 19, 1913, the defendant company entered a plea of guilty to the indictment and the court imposed a fine of $25 and costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 1, 1913.*

1630°—No. 2519—13

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F. & D. No. 3362.
S. No. 1236. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2520.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 10 Barrels Nutromalt. Decree of condemnation by default. Goods ordered destroyed.

MISBRANDING OF NUTROMALT.

On January 15, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 barrels of "Nutromalt," remaining unsold in the original unbroken packages and in the possession of Sam Bauman & Co., Memphis, Tenn., alleging that the product had been shipped on or about October 28, 1911, by the Henderson Brewing Co., Henderson, Ky., and transported from the State of Kentucky into the State of Tennessee, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Nutromalt, Non-Intoxicating. Less than ½ of 1% Alcohol. (Label Guaranteed) Henderson Brewing Co., Henderson, Ky."

Misbranding of the product was alleged in the libel for the reason that the labels on the bottles contained in the barrels stated that the product contained only one-half of 1 per cent of alcohol, when, in truth and in fact, it contained 1 per cent or more than 1 per cent of alcohol; and further, the word "Nutromalt" implied that the product was made entirely from malt with no substitute, when, in truth and in fact, it was not made wholly from malt, and said label was therefore false and misleading to the purchaser, causing him to believe that the product was made wholly from malt, and further causing him to believe that it contained less than one-half of 1 per cent of alcohol.

On November 19, 1912, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 7, 1913.*

2864°—No. 2520—13

F. & D. No. 3369.
S. No. 1243.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2521.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 75 Cases Tomato Catsup. Decree of condemnation by consent. Goods ordered destroyed.

ADULTERATION OF TOMATO CATSUP.

On January 22, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 75 cases of tomato catsup remaining unsold in the original unbroken packages and in a certain warehouse on Carolina Avenue and the Illinois Central Railroad Co.'s tracks, Memphis, Tenn., alleging that the product had been shipped on or about September 22, 1911, by the Dodson-Braun Branch, National Pickle & Canning Co., St. Louis, Mo., and transported from the State of Missouri into the State of Tennessee, and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Cupid Brand Choicest Tomato Catsup, 1/10 of 1% Sodium Benzoate. Dodson-Braun Branch, National Pickle & Canning Co., St. Louis, Mo."

Adulteration of the product was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance, to wit, filthy, decomposed, and putrid tomatoes and other filthy, decomposed, and putrid vegetable matter; that is to say, a product with no active signs of spoilation, but under microscopic examination disclosed that 20 per cent of the microscopic fields contained mold filaments, and that each one-sixtieth cubic millimeter contained 85 yeasts and spores, and that each cubic centimeter of said product contained 300,000,000 bacteria.

On August 3, 1912, the said Dodson-Braun Branch, National Pickle & Canning Co., claimant, having consented thereto, a decree of condemnation and forfeiture was entered and it was ordered by the court that the product should be delivered to said claimants upon

payment of the costs of the proceedings, amounting to $19.30, and the execution of a bond in the sum of $500, and upon condition that said claimant should dump out and destroy the product, and upon failure of said condition that the product should be destroyed by the United States marshal.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 7, 1913.*

2521

F. & D. No. 3409.
S. No. 1267. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2522.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 100 Cases Tomato Catsup. Decree of condemnation by default. Goods ordered destroyed.

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On February 7, 1912, the United States Attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases of tomato catsup remaining unsold in the original unbroken packages and in possession of M. J. Hinckley & Co., New Orleans, La., alleging that the product had been shipped on or about December 6, 1911, by the Huss Edler Preserve Co., Chicago, Ill., and transported from the State of Illinois into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Kinzie Brand Fred C. Edler Prop. Huss Edler Preserve Co. Chicago. Catsup contains tomatoes and parts thereof and 1/10 of 1% Benzoate of soda."

Adulteration of the product was alleged in the libel for the reason that samples thereof were analyzed and examined, and mold filaments were found in 40 per cent of the microscopic fields examined, and said product was found to contain 200,000,000 bacteria per cc and 130 yeasts and spores per one-sixtieth cubic millimeter, and said article consisted in part of filthy and decomposed vegetable substances. Adulteration was alleged for the further reason that a product of apples was contained in the article and was substituted in part for tomato catsup and was mixed therewith so as to reduce, lower, and injuriously affect its quality and strength. Misbranding was alleged for the reason that the label set forth above indicated that the product was made of tomatoes and parts thereof and did not indicate that it contained any product of apples, whereas, in truth and in fact, it did contain a product of apples and said label was false and misleading as to the ingredients of the article so as to deceive and mislead the purchaser into believing that it was made

entirely of tomatoes, whereas, in truth and in fact, it was made in part of apple product.

On April 1, 1912, Fred C. Edler, doing business as the Huss Edler Preserve Co., filed his answer to the libel, and on January 18, 1913, said United States Attorney filed a rule to show cause why the answer should not be stricken from the record by reason of the claimant's default in filing a stipulation for costs as required by admiralty rules; and on February 18, 1913, an order was entered by the court striking the answer from the record.

On February 25, 1913, the case having come on for final hearing, and no claimant appearing for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal, and that Fred C. Edler and the Huss Edler Preserve Co. pay all the costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 11, 1913.*

2522

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F. & D. No. 3401
S. No. 1268. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2523.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 150 Cases Tomato Catsup. Decree of condemnation by default. Goods ordered destroyed.

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On February 7, 1912, the United States Attorney for the Eastern District of Louisiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 150 cases of tomato catsup remaining unsold in the original unbroken packages and in possession of the Marx Extract Co., New Orleans, La., alleging that the product had been shipped on or about December 6, 1911, by the Huss Edler Preserve Co., Chicago, Ill., and transported from the State of Illinois into the State of Louisiana, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: " Phoenix Brand Contains 1–10 of 1% Benzoate of Soda, Tomatoes and parts thereof, Catsup made from fresh ripe stock, Guaranteed by Marx Extract Co., under the Food & Drugs Act, June 30, 1906. Serial No. 30300. Marx Extract Co. New Orleans, La."

Adulteration of the product was alleged in the libel for the reason that samples thereof were analyzed and examined and found to contain 350,000,000 bacteria per cc and 190 yeasts and spores per one-sixtieth cubic millimeter, and mold filaments were found present in 45 per cent of the microscopic fields examined, and said product consisted in part of filthy and decomposed vegetable substances. Adulteration was alleged for the further reason that a product of apples had been substituted for tomato catsup and was mixed therewith so as to reduce, lower, and injuriously affect its quality and strength. Misbranding was alleged for the reason that the label set forth above indicated that the product was manufactured by the Marx Extract Co., New Orleans, La., whereas, in truth and in fact, it was manufactured by the Huss Edler Preserve Co., Chicago, Ill.,

and said label was false and misleading as it further indicated that the product was made of tomatoes and parts thereof and did not indicate that it contained any product of apples, whereas, in truth and in fact, it did contain a product of apples, and the label was false and misleading as to the said product and the ingredients thereof and was such as to deceive and mislead the purchaser into believing that it was made of tomatoes alone instead of tomatoes and some product of apples of which it was composed in part.

On April 1, 1912, Fred C. Edler, doing business as the Huss Edler Preserve Co., filed his answer to the libel, and on January 18, 1913, said United States Attorney filed a rule to show cause why the answer should not be stricken from the record by reason of the claimant's default in filing a stipulation for costs as required by admiralty rules; and on February 18, 1913, an order was entered by the court striking the answer from the record.

On February 25, 1913, the case having come on for final hearing, and no claimant appearing for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal, and that Fred C. Edler and the Huss Edler Preserve Co. pay all the costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 12, 1913.*

2523

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F. & D. No. 3433.
S. No. 1276. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2524.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 52 Barrels of Vinegar. Decree of condemnation by consent. Goods released on bond.

ADULTERATION AND MISBRANDING OF VINEGAR.

On February 16, 1912, the United States Attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 52 barrels of so-called sugar vinegar remaining unsold in the original unbroken packages and in possession of the La Fayette Smith Grocer Co., Springfield, Ill., alleging that the product had been shipped on or about July 3, 1911, by the A. Braun Manufacturing Co., St. Louis, Mo., and transported in interstate commerce from the State of Missouri into the State of Illinois, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Manufactured for La Fayette Smith Groc. Co., Springfield, Ill. brand 50, sugar 50, vinegar."

Adulteration of the product was alleged in the libel for the reason that it consisted wholly or in part of distilled vinegar which had been artificially colored, substituted for, and packed in the barrels in imitation of sugar vinegar so that distilled vinegar and artificial coloring had been substituted wholly or in part for sugar vinegar and so that said product was mixed and colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that each of the barrels was branded, as set forth above, which said brand and label bore a statement, design, and device regarding the product and the ingredients and substances contained therein which was false and misleading, in that said label and brand purported to declare, and in substance and in fact did declare, that each of the barrels contained an article of food known as sugar vinegar, when, in truth and in fact, it consisted in whole or in part of distilled vinegar, artificially colored in imitation of sugar vinegar, and in that

said product was in imitation of and was offered for sale under the distinctive name of sugar vinegar, when, in truth and in fact, it was not sugar vinegar but was an imitation thereof.

On March 4, 1912, the said La Fayette Smith Grocer Co., having entered its appearance, admitted all the material allegations in the libel and consented thereto, a decree of condemnation and forfeiture was entered and it was ordered by the court that the product should be redelivered to said claimant upon payment of all costs of the proceedings and the execution of bond in the sum of $500, in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 12, 1913.*

2524

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F. & D. No. 3447.
I. S. No. 15901–c.
Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2525.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Claudius M. Tice. Plea of nolo contendere. Information placed on file.

ADULTERATION AND MISBRANDING OF MAPLE SYRUP.

On June 14, 1913, the United States Attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Claudius M. Tice, doing business under the firm name and style of the Bay State Maple Syrup Co., Boston, Mass., alleging shipment by said defendant, in violation of the Food and Drugs Act, on April 20, 1911, from the State of Massachusetts into the State of Maine, of a quantity of maple syrup which was adulterated and misbranded. The product was labeled: "Mount Washington Brand Maple Sap Syrup. Choicest quality. Absolutely Pure. Bay State Maple Syrup Co., Boston, Mass."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed that it contained 37.3 per cent of moisture. Adulteration of the product was alleged in the information for the reason that a substance, to wit, water, in an excessive amount, had been substituted in part for said food. Misbranding was alleged for the reason that the package and the label thereof bore a certain statement, design, and device regarding said food and the ingredients and substances contained therein, that is to say, the statement "Absolutely pure choicest quality maple sap syrup," printed on the package and label thereof, which said statement was false and misleading, in that it would mislead and deceive the purchaser into the belief that the food was a pure maple syrup, whereas, in truth and in fact, it was not a pure maple syrup.

On December 30, 1912, the defendant entered a plea of nolo contendere to the information and the same was placed on file.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 14, 1913.*

2862°—No. 2525—13

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F. & D. No. 3492.
I. S. No. 268–d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2526.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Williams Bros. Co. Plea of nolo contendere. Fine, $100.

ADULTERATION AND MISBRANDING OF APPLE JELLY.

On April 20, 1912, the United States Attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Williams Bros. Co., a corporation, Detroit, Mich., alleging shipment by said company, on May 22, 1911, from the State of Michigan into the State of Iowa, of a quantity of apple jelly which was adulterated and misbranded in violation of the Food and Drugs Act. The product was labeled: "Williams Apple Jelly. The Williams Bros. Co., Detroit, Mich. Guaranteed by the Williams Bros. Co. under the Food & Drugs Act, June 30, 1906."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Tartaric acid, 0.34 per cent; solids, 72.0 per cent. Adulteration of the product was alleged in the information for the reason that a substance had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality and strength, and that a substance had been substituted wholly or in part for the product, in that it contained 0.34 per cent of tartaric acid. Misbranding was alleged for the reason that the statement "Apple Jelly," borne on the label, was false and misleading because it would mislead and deceive the purchaser into the belief that said product was apple jelly, whereas, in truth and in fact, it was apple jelly prepared with tartaric acid, and said product was further misbranded in that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Apple Jelly," thereby purporting that it was pure apple jelly, whereas, in truth and in fact, it was apple jelly prepared with tartaric acid.

On April 24, 1912, the defendant company entered a plea of nolo contendere to the information and the court imposed a fine of $100.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 14, 1913.*

2862°—No. 2526—13

F. & D. No. 3591.
I. S. No. 1855–d.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2527.

(Given pursuant to section 4 of the Food and Drugs Act.)

U S. v. John and Hugo Jaburg. Plea of guilty. Sentence suspended.

ADULTERATION AND MISBRANDING OF LEMON EXTRACT.

On August 6, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John Jaburg and Hugo Jaburg, doing business under the name and style of Jaburg Bros., New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, on October 27, 1911, from the State of New York into the State of Virginia, of a quantity of lemon extract which was adulterated and misbranded. The product was labeled: "3/4 standard strength lemon extract, artificially colored. Jaburg Bros., importers, manufacturers and dealers in fine essential oils. Flavoring extracts and pure food colors * * *."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Alcohol (per cent by volume), 53.4; lemon oil (per cent by precipitation), 0.25; lemon oil (per cent by polarization), 0.20; citral (Hiltner method), 0.10 per cent; solids (grams per 100 cc), 0.18; ash (grams per 100 cc), 0.30; ash consists almost exclusively of MgO; colored with coal-tar dye (naphthol yellow S); a small amount of a natural coloring matter resembling that of lemon peel also present. This product is less than three-fourths standard strength as stated on the label. The artificial color conceals inferiority. Adulteration of the product was alleged in the information for the reason that a substance, to wit, dilute alcohol containing merely traces of lemon oil, had been mixed and packed therewith in such manner as to reduce, lower, and injuriously affect its quality and strength, and it was further adulterated in that a substance, to wit, dilute alcohol containing merely traces of lemon oil, had been substituted in part for the article, and further in that it was colored in a manner whereby inferiority was concealed.

Misbranding was alleged for the reason that the package and label of the product bore a statement, to wit, " 3/4 standard strength lemon extract," which said statement was false and misleading because it would mislead and deceive the purchaser into the belief that the product had a strength equivalent to three-fourths of that of standard lemon extract, whereas, in truth and in fact, it was a dilute alcohol containing merely traces of lemon oil and its strength was not equivalent to three-fourths of the strength of standard lemon extract; and further, in that it was labeled and branded so as to deceive and mislead the purchaser, in that its label and brand contained the statement " 3/4 standard strength lemon extract," said label and brand thereby falsely representing that the strength of the product was three-fourths of the strength of standard extract of lemon, whereas, in truth and in fact, said product was dilute alcohol containing merely traces of lemon oil and was not three-fourths as strong as standard lemon extract.

On October 23, 1912, the defendants entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 14, 1913.*

2527

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F. & D. No. 3626.
I. S. No. 885–d.
Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2528.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. G. W. Chase & Son Mercantile Co. Plea of nolo contendere. Fine, $1 and costs.

ADULTERATION AND MISBRANDING OF CHOCOLATE BEANS.

On October 22, 1912, the United States Attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the G. W. Chase & Son Mercantile Co., a corporation, St. Joseph, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 30, 1911, from the State of Missouri into the State of Nebraska, of 10 pails of chocolate beans which were adulterated and misbranded. The product was labeled: "40# Woolworth & Co., Omaha, Nebr. Chocolate Beans Artificial Flavors. Guaranteed by G. W. Chase & Son Mer. Co. under the Food and Drugs Act, June 30, 1906, Serial No. 4866, 54108 C B & Q Omaha 10–4."

Analysis of a sample of the product made by the Bureau of Chemistry of this Department showed the following results: Ash, 0.15 per cent; non-volatile ether extract, 0.18 per cent; coating, none; appearance and taste do not indicate the presence of an appreciable amount of chocolate. Adulteration of the product was alleged in the information for the reason that the pails did not, in truth and in fact, contain chocolate beans but some other substance had been substituted in whole or in part for chocolate and the contents of the pails did not contain an appreciable amount of chocolate. Misbranding was alleged for the reason that the statement on the label of each of the pails of the product in prominent position and type was false and misleading, in that it conveyed the impression and so stated that the product contained chocolate, whereas, in truth and in fact, there was not contained in the pails an appreciable amount of chocolate. The product was further misbranded in that the statement "chocolate beans," borne on the label, would mislead and deceive the pur-

chaser into the belief that the product contained chocolate, whereas, in truth and in fact, it contained no appreciable amount of chocolate but a mere trace thereof.

On March 7, 1913, the defendant company entered a plea of nolo contendere to the information and the court imposed a fine of $1 and costs.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 14, 1913.*

2528

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F. & D. No. 3782.
I. S. No. 17051–c.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2529.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Charles Jacquin et Cie. Plea of guilty. Sentence suspended.

ADULTERATION AND MISBRANDING OF ESSENCE OF WINTERGREEN.

On August 8, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles Jacquin et Cie, a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on November 12, 1910, from the State of New York into the State of New York, of a quantity of essence of wintergreen which was adulterated and misbranded. The product was labeled: "Charles Jacquin et Cie., Inc., N. Y. Ess. Wintergreen * * * Serial No. 1120 Liqueur Superfine Made in New York. Bottled by Charles Jacquin et Cie. Inc., New York."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Alcohol, per cent by volume, 47.20; specific gravity, 15.6°/15.6° C., 0.9381; solids, grams per 100 cc., 0.014; methyl salicylate (by saponification), per cent by volume, 0.21; colored with two coal-tar dyes (light green S F; yellowish and naphthol yellow S). This is not an essence of wintergreen for the reason that the amount of oil of wintergreen contained therein is less than 3 per cent by volume. The presence of coal-tar color conceals its inferiority. Adulteration of the product was alleged in the information for the reason that a substance, to wit, a dilute essence of wintergreen, had been mixed and packed with it in such manner as to reduce, lower, and injuriously affect its quality and strength, and further, in that a substance, to wit, a dilute essence of wintergreen, had been substituted wholly or in part for the

product, and further, in that it was colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that the label and package of the product bore the statement "Ess. Wintergreen," which statement was false and misleading because it would mislead and deceive the purchaser into the belief that the product was a genuine essence of wintergreen, whereas, in truth and in fact, it was but a dilute essence of wintergreen, and it was further misbranded in that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Ess. Wintergreen," it being represented by said statement that the product was a genuine essence of wintergreen, whereas, in truth and in fact, it was a dilute essence of wintergreen.

On October 14, 1912, the defendant company entered a plea of guilty to the information and the court suspended sentence. Shipment in this case was made from the State of New York, through the States of New Jersey and Pennsylvania, into the State of New York.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 15, 1913.*

2529

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F. & D. No. 3830.
I. S. No. 15292–c.
Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2530.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Dawson Bros. Manufacturing Co. Plea of guilty. Fine, $25 and costs.

ADULTERATION AND MISBRANDING OF VINEGAR.

On September 7, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Dawson Bros. Manufacturing Co., a partnership consisting of L. J. Dawson and D. Dawson, Memphis, Tenn., alleging shipment by said defendants, in violation of the Food and Drugs Act, on February 27, 1911, from the State of Tennessee into the State of Oklahoma, of a quantity of vinegar which was adulterated and misbranded. The product was labeled: "Dawson Bros. Mfg. Co., Pure Fermented Apple Cider Vinegar, Circle 'D' Brand, Memphis, Tenn."

Analysis of a sample of the product made by the Bureau of Chemistry of this Department showed the following results: Specific gravity, 15.6°/15.6° C., 1.0132; total acids as acetic (grams per 100 cc), 4.10; volatile acid as acetic (grams per 100 cc), 4.08; fixed acid as malic (grams per 100 cc), 0.025; total solids (grams per 100 cc), 1.59; reducing sugar (grams per 100 cc), 0.61; ash (grams per 100 cc), 0.31; alkalinity soluble ash (cc N/10 acid per 100 grams), 31.6; phosphoric acid in ash (mg per 100 cc), 21.2; glycerol (grams per 100 cc), 0.088; alcohol precipitate (grams per 100 cc), 0.109; pentosans (grams per 100 cc), 0.112; lead precipitate, heavy; polarization, 200 mm tube, –1.2° V.; color removed by fuller's earth, 66 per cent; color, Brewer's scale No. 52, 6.5°. Adulteration of the product was alleged

in the information for the reason that a substance, to wit, a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter, had been substituted wholly or in part for the genuine article. Misbranding was alleged for the reason that the statement "Apple cider vinegar" upon the label was false and misleading because it conveyed the impression that the product was genuine apple cider vinegar conforming to the standard for such article, whereas, in truth and in fact, it consisted wholly or in part of a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser, being labeled "Apple cider vinegar," thereby purporting to be genuine apple cider vinegar conforming to the standard for such article, whereas, in truth and in fact, it consisted wholly or in part of a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter.

On November 23, 1912, the defendant partnership entered a plea of guilty to the information and the court imposed a fine of $25, with costs of $15.55.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *July 23, 1913.*

2530

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F. & D. No. 3831.
I. S. No. 19527–c.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2531.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. L. Shepp & Co. Plea of guilty. Sentence suspended.

ADULTERATION AND MISBRANDING OF SHREDDED COCOANUT.

On August 8, 1912, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against L. Shepp & Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on May 9, 1911, from the State of New York into the State of Pennsylvania of a quantity of shredded cocoanut which was adulterated and misbranded. The product was labeled: "50 lb. Paragon No. 1 Shredded Cocoanut."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed that sugar had been mixed and packed with it. Adulteration of the product was alleged in the information for the reason that a substance, to wit, sucrose or cane sugar, had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality and strength, and in that said substance, to wit, sucrose or cane sugar, had been substituted in part for the product. Misbranding was alleged for the reason that the package and label of the product bore a statement, to wit, "Shredded cocoanut," regarding the articles, ingredients, and substances contained therein which was false and misleading, in that said statement "Shredded cocoanut" conveyed the impression that the product was pure cocoanut prepared without the addition of sugar, whereas, in fact, it was a mixture of shredded cocoanut and cane sugar.

On October 14, 1912, the defendant company entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 21, 1913.*

10453°—No. 2531—13

F. & D. No. 3845.
I. S. Nos. 12214-d and 12215-d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2532.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Dawson Bros. Manufacturing Co. Plea of guilty. Fine, $25 and costs.

ADULTERATION AND MISBRANDING OF VINEGAR.

On September 9, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Dawson Bros. Manufacturing Co., a partnership, consisting of L. J. Dawson and D. Dawson, Memphis, Tenn., alleging shipment by said defendants, in violation of the Food and Drugs Act, on August 31, 1911, from the State of Tennessee into the State of Texas of a quantity of vinegar which was adulterated and misbranded. Part of the product was labeled: "Dawson Bros. Mfg. Co., Pure Fermented Apple Cider vinegar. (Circle D) Brand. Memphis, Tenn." Part of the product was labeled: "Dawson Bros. Mfg. Co., Pure Apple Cider vinegar, Memphis, Tenn."

Analyses of samples of the product made by the Bureau of Chemistry of this Department showed the following results:

	Sample No. 1.	Sample No. 2.
Solids (grams per 100 cc)	1.66	1.65
Ash (grams per 100 cc)	.30	.31
Alkalinity of soluble ash (cc of N/10 acid per 100 grams)	31.20	32.00
Reducing sugar, direct (grams per 100 cc)	.76	.75
Non-sugar solids (grams per 100 cc)	.90	.90
Lead precipitate	Medium	Medium
Polarization, direct at 28° C. (°V.)	—1.20	—1.20
Total acid (grams per 100 cc)	4.02	4.02

	Sample No. 1.	Sample No. 2.
Volatile acid (grams per 100 cc)	4.01	4.01
Fixed acid (grams per 100 cc)	.01	.01
Total P_2O_5 (mg per 100 cc)	42.60	41.20
Pentosans (grams per 100 cc)	.06	.06
Alcohol (per cent by volume)	None	None
Glycerine (grams per 100 cc)	.08	.10

Adulteration of the product was alleged in the information for the reason that a substance, to wit, a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter, had been substituted wholly or in part for the genuine article.

Misbranding was alleged for the reason that the statement "Apple cider vinegar" appearing on the label was false and misleading because it conveyed the impression that the product was a genuine apple cider vinegar conforming to the standard for such article, whereas, in truth and in fact, it consisted in whole or in part of a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter. Misbranding was alleged for the further reason that the product was labeled and branded so as to deceive and mislead the purchaser thereof, being labeled "Apple cider vinegar," thereby purporting that it was genuine apple cider vinegar conforming to the standard of such article, when, in truth and in fact, it consisted in whole or in part of a dilute solution of acetic acid or distilled vinegar, a product high in reducing sugars and foreign mineral matter.

On November 12, 1912, a plea of guilty to the information was entered by defendants and the court imposed a fine of $25, with costs of $15.55.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 21, 1913.*

2532

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F. & D. No. 3963.
I. S. Nos. 14886–d, 14888–d, 14889–d, 14890–d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2533.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. William A. Webster Co. Plea of guilty. Fine, $10 and costs.

ADULTERATION AND MISBRANDING OF LEMON EXTRACT, BANANA EXTRACT, STRAWBERRY EXTRACT, AND PINEAPPLE EXTRACT.

On September 7, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the William A. Webster Co., a corporation, Memphis, Tenn., alleging shipment by said defendant, in violation of the Food and Drugs Act, on December 13, 1911, from the State of Tennessee into the State of Mississippi—

(1) Of a quantity of lemon extract which was adulterated and misbranded. The product was labeled: "Pure extract of Lemon, the Wm. A. Webster Co., Memphis, Tenn." Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Specific gravity (20° C.), 0.8192; solids (per cent by weight), 0.15; alcohol (per cent by volume), 88.2; methyl alcohol, absent; coloring matter, Naphthol Yellow S; oil by precipitation (per cent by volume), 5.2; oil by rotation (per cent by volume), 5.4; aldehydes as citral (per cent by weight), 0.27; lemon peel color, poor. Adulteration of the product was alleged in the information for the reason that it had been colored with an article, to wit, a coal-tar dye, whereby inferiority was concealed. Misbranding was alleged for the reason that the following statement, "Pure concentrated Ext. of Lemon," appearing on the label, was false and misleading because it conveyed the impression that the product was a concentrated extract of lemon, whereas, in truth

and in fact, it was not such; and further, the statement "Ext. of Lemon" borne on the label was false and misleading because it would mislead and deceive the purchaser into believing that the product was genuine extract of lemon conforming to the standard of such article, when, in truth and in fact, it was an extract of lemon artificially colored with a coal-tar dye, the presence of which was not stated on the label; and further, for the reason that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Pure concentrated Ext. of Lemon," thereby purporting to be concentrated lemon extract, whereas, in truth and in fact, it was not a concentrated lemon extract; and further, for the reason that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Ext. of Lemon," thereby purporting to be the genuine extract of lemon of the standard quality, whereas, in truth and in fact, it was an extract of lemon artificially colored with a coal-tar dye, which fact was not stated upon the label.

(2) Of a quantity of banana extract which was adulterated and misbranded. This product was labeled: "Pure Concentrated Extract of Banana, the Wm. A. Webster Co., Memphis, Tenn." Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Specific gravity (20° C.), 0.9077; solids (per cent by weight), 10.30; alcohol (per cent by volume), 67.6; methyl alcohol, absent; coloring matter, Naphthol Yellow S; esters (as ethyl acetate) (per cent by weight), 2.04; chloroform, Hoffman's test, negative. Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation banana flavor, artificially colored, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength; and in that a substance, to wit, an imitation banana flavor artificially colored, had been substituted in part for the article; and further, for the reason that the product was colored in a manner whereby its inferiority was concealed. Misbranding was alleged for the reason that the statement on the label, to wit, "Pure Concentrated ext. of Banana," was false and misleading because it would create the impression that the product was a genuine concentrated banana extract, whereas, in truth and in fact, it was an imitation extract of banana artificially colored; and further, for the reason that it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Pure Concentrated ext. of Banana," thereby purporting that the product was a concentrated banana extract, when, as a matter of fact, it was an imitation of banana flavor artificially colored.

(3) Of a quantity of extract of pineapple which was adulterated and misbranded. This product was labeled: "Pure Concentrated

Ext. of Pine Apple, the Wm. A. Webster Co., Memphis, Tenn." Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Specific gravity (20° C.), 0.8720; solids (per cent by weight), 0.03; alcohol (per cent by volume), 75.1; methyl alcohol, absent; coloring matter, Naphthol Yellow S; esters (as ethyl acetate) (per cent by weight), 1.13; chloroform, negative. Adulteration of this product was alleged in the information for the reason that a substance, to wit, an imitation extract of pineapple artificially colored, had been mixed and packed with it so as to reduce, lower, and injuriously affect its quality and strength, and a substance, to wit, an imitation extract of pineapple artificially colored, had been substituted in part for the article; and further, said product was colored in a manner whereby its inferiority was concealed. Misbranding was alleged for the reason that the statement "Pure Concentrated Ext. of Pine Apple," borne on the label, was false and misleading because it conveyed the impression that the product was a concentrated pineapple extract, when, as a matter of fact, it was an imitation extract of pineapple artificially colored; and further, it was labeled and branded so as to deceive and mislead the purchaser, being labeled "Pure Concentrated Ext. of Pine Apple," thereby purporting that it was a concentrated pineapple extract, when, as a matter of fact, it was an imitation extract of pineapple artificially colored.

(4) Of a quantity of strawberry extract which was adulterated and misbranded. The product was labeled: "Pure Concentrated Ext. of Strawberry, the Wm. A. Webster Co., Memphis, Tenn." Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Specific gravity (20° C.), 0.9128; solids (per cent by weight), 11.66; alcohol (per cent by volume), 66.2; methyl alcohol, absent; esters (as ethyl acetate) (per cent by weight), 0.37; chloroform (Hoffman's test), negative; animal color, cochineal. Adulteration of the product was alleged in the information for the reason that a substance, to wit, an imitation strawberry extract artificially colored, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and in that a substance, to wit, an imitation strawberry extract artificially colored, had been substituted in part for the article, and further, in that the product was colored in a manner whereby its inferiority was concealed. Misbranding was alleged for the reason that the statement "Pure Concentrated Ext. of Strawberry" borne on the label was false and misleading because it conveyed the impression that the product was a concentrated strawberry extract, when, in truth and in fact, it was an imitation strawberry extract artificially colored; and further, for the reason that it was so labeled and

branded as to deceive and mislead the purchaser thereof, being labeled "Pure Concentrated Ext. of Strawberry," thereby purporting that the product was a concentrated strawberry extract, when, in truth and in fact, it was an imitation strawberry extract artificially colored.

On November 25, 1912, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10 and costs amounting to $17.50.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 22, 1913.*

2533

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F. & D. No. 4240.
I. S. No. 14853-d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2534.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. William A. Webster Co. Plea of guilty. Fine, $10 and costs.

ADULTERATION AND MISBRANDING OF SYRUP IRON IODIDE.

On September 7, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the William A. Webster Co., a corporation, Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, on December 13, 1911, from the State of Tennessee into the State of Mississippi, of a quantity of syrup iron iodide which was adulterated and misbranded. The product was labeled: "Syrup Iron Iodide (Syrupus Ferri Iodidi) U. S. P. Representing 10 per cent Ferrous Iodide. An Alterative Tonic. Specially indicated in scrofulous or syphilitic conditions, enlarged lymphatic glands, or infiltration of connective tissue. Dose. For adult, 30 to 40 drops; for children 2 to 3 drops well diluted. Guaranteed under the Pure Food and Drugs Act, June 30, 1906. Serial Number 24830, by William A. Webster Co., Pharmaceutical Manufacturers, Memphis, Tenn."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed ferrous iodide 4.6 per cent. Adulteration of the product was alleged in the information for the reason that the label thereon stated that it contained 10 per cent ferrous iodide, when, in truth and in fact, it contained only 4.6 per cent of ferrous iodide, and said product fell below the professed standard under which it was sold, to wit, 10 per cent ferrous iodide. Misbranding was alleged for the reason that the statement "Syrup Iron Iodide

(Syrupus Ferri Iodidi) U. S. P. representing 10 per cent ferrous iodide" borne on the label was false and misleading because it created the impression that the product contained 10 per cent ferrous iodide, whereas, in truth and in fact, it contained only 4.6 per cent ferrous iodide; and further, the label upon the product stated that it contained 10 per cent ferrous iodide, which statement was false and misleading, said product containing less than one-half of said amount of ferrous iodide.

On November 25, 1912, defendant company entered a plea of guilty to the information and the court imposed a fine of $10 with costs amounting to $15.40.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 23, 1913.*

2534

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F. & D. No. 4393.
I. S. No. 3212–d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2535.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Dodge & Olcott. Plea of guilty. Sentence suspended.

ADULTERATION AND MISBRANDING OF OIL OF LAVENDER.

On February 28, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Dodge & Olcott Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on July 8, 1910, from the State of New York into the State of Michigan of a quantity of oil of lavender which was adulterated and misbranded. The product was labeled: "Oil Lavender (Fleur Mottet's) Extra Serial No. 3911 Imported by Dodge & Olcott Co."

An analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Specific gravity 25° C., 0.9035; refractive index at 20° C., 1.4632; refractive index after extraction with 5 per cent alcohol, 1.4649; optical rotation 100 mm 20° C., —3.47°; soluble in 3 volumes of 70 per cent alcohol; evaporation residue (per cent), 3.48; saponification number, residue non-volatile on steam bath, 7.3; esters as linalyl acetate (per cent), 35.39; esters after extraction with 5 per cent alcohol (per cent), 29.75; glycerol esters (Schimmel's test), present; glyceryl esters (acrolein test), present; citric acid esters (Denige's test), absent. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, oil of lavender flowers, and differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia

official at the time of said shipment and investigation; and, further, in that said product contained glycerin esters, which is not one of the ingredients of oil of lavender flowers, as defined in said Pharmacopœia. Misbranding of the product was alleged for the reason that the label set forth above regarding the product and the ingredients and substances contained therein was false and misleading, in that said label would indicate that the product consisted of oil of lavender, whereas, in truth and in fact, it consisted of a mixture of oil of lavender and glycerin esters.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 25, 1913.*

2535

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F. & D. No. 4398.
I. S. No. 1549–d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2536.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Poleti, Coda & Rebecchi (Inc.). Plea of guilty. Fine, $100.

ADULTERATION AND MISBRANDING OF MACARONI.

On February 28, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Poleti, Coda & Rebecchi (Inc.), a corporation, New York, N. Y., alleging the shipment by said company, in violation of the Food and Drugs Act, on October 16, 1911, from the State of New York into the State of Massachusetts of a quantity of macaroni which was adulterated and misbranded. The product bore a label in the Italian language, which translated reads as follows: "Viacava Premium Paste factory Special Gluten Paste Italian Patent Trade Mark pastes and pastullas with eggs Patented Hygienic mechanical system."

An analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Color, Naphthol Yellow S, S and J number 4; nitrogen, 2.40 per cent; protein (6.25), 15.00 per cent; lecithin P_2O_5, 0.0198 per cent; moisture, 11.38 per cent; ether extract (unpurified), 1.125 per cent. Adulteration of the product was alleged in the information for the reason that another substance, to wit, a paste made from ordinary wheat flour and artificially colored, was mixed and packed with the product so as to reduce, lower, and injuriously affect its quality and strength, and further, in that a substance, to wit, a paste made from ordinary

wheat flour, artificially colored, was substituted wholly for the genuine article, gluten paste with egg; and, further, in that said product was colored with a yellow coal-tar dye so as to resemble the appearance of egg in such a manner as to conceal the inferiority of the product. Misbranding was alleged for the reason that the label set forth above regarding the product and the ingredients and substances contained therein was false and misleading, and said product was labeled so as to deceive and mislead the purchaser thereof, in that the label would indicate that the article was a paste made from a flour containing a large amount of gluten, whereas, in truth and in fact, it was made from ordinary wheat flour; and further, in that said label would indicate that the product contained a substantial amount of egg, whereas, in truth and in fact, it contained practically no egg; and further, in that the article purported to be a foreign product, to wit, a product of Italy, whereas, in truth and in fact, it was a domestic product.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $100.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 25, 1913.*

2536

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F. & D. No. 4409.
I. S. No. 15668–d.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2537.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. National Refrigerator & Butchers Supply Co. Plea of guilty. Fine, $10 and costs.

ADULTERATION AND MISBRANDING OF OX-ALINE MEAT COLOR.

On September 7, 1912, the United States Attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Refrigerator & Butchers Supply Co., a corporation, doing business at Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, on March 30, 1912, from the State of Tennessee into the State of Missouri of a quantity of "Ox-Aline Meat Color" which was adulterated and misbranded. The product was labeled: "Ox-aline Meat and Sausage Color. Indispensable to Market Men and Sausage Makers. Ox-aline is a concentrated blood color, of highest quality and purely vegetable, prepared only by the National Man'f'g. & Supply Co."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Ash, 82.2 per cent; carbonates, present, not estimated; chlorides, heavy, as NaCl, 59.09 per cent; sulphates, very small amount, not determined; color, entirely coal tar (Ponceau 3 R); borates, strongly positive, 7.45 per cent as boric acid. Adulteration of the product was alleged in the information for the reason that it contained an added poisonous and deleterious ingredient, to wit, boric acid, which rendered it injurious to health. Misbranding was alleged for the reason that the statements

" Ox-aline is a concentrated blood color of highest quality, and purely vegetable," and " Ox-aline Meat Color Purely vegetable " borne upon the label were false and misleading because, as a matter of fact, the product was not a concentrated blood color and was not purely vegetable, but was a substance containing approximately 82 per cent of mineral matter, 7.45 per cent of which was boric acid, and said product was colored with a coal-tar dye, to wit, Ponceau 3 R. Misbranding was alleged for the further reason that the product was labeled and branded so as to mislead and deceive the purchaser thereof, being labeled and branded so as to represent to the purchaser that it was a color derived from blood and purely vegetable coloring matter, when, in truth and in fact, it was not purely vegetable but contained approximately 82 per cent of mineral matter, and owed its color wholly or in part to the presence therein of a coal-tar dye, to wit, Ponceau 3 R.

On November 25, 1912, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10 and costs amounting to $18.58.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 25, 1913.*

2537

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F. & D. No. 4449.
I. S. No. 15350-d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2538.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Louis Scianamea. Plea of guilty. Fine, $100.

ADULTERATION AND MISBRANDING OF OLIVE OIL.

On March 5, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Louis Scianamea, New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on June 20, 1912, from the State of New York into the State of Connecticut, of a quantity of olive oil which was adulterated and misbranded. The product was labeled: "Huile D' Olive Marca Depositata Vincenzo Jacobitti Lanciano-Bari" "Olive Oil V. J. Product of Italy Guaranteed absolutely pure Guaranteed one full quart."

An analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Index of refraction at 25° C., 1.4681; iodin number (Hanus), 92.3; Halphen test for cottonseed oil, positive; average shortage, 7.9 per cent. Adulteration of the product was alleged in the information for the reason that there was substituted in part for the genuine article another article, to wit, cottonseed oil. Misbranding was alleged for the reason that the product was labeled as set forth above so as to deceive and mislead the purchaser thereof, in that said label would indicate that the product was olive oil produced in Italy, whereas, in truth and in fact, it was a mixture of olive oil and cottonseed oil; and was further misbranded in that it was in package form and the contents were not stated correctly in terms of measure on the outside of the pack-

age, in that said package stated the product to be one full quart, whereas, in truth and in fact, it was 92 per cent of a full quart; and was further misbranded in that it purported to be a foreign product, to wit, a product of Italy, whereas, in truth and in fact, it was a product of the United States; and was further misbranded in that it was falsely branded as to the country in which it was manufactured or produced in being branded as a product of Italy, whereas, in truth and in fact, it was not produced or manufactured in Italy but was produced and manufactured in the United States.

On March 17, 1913, the defendant entered a plea of guilty to the information and the court imposed a fine of $100.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 26, 1913.*

2538

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F. & D. No. 4544.
I. S. No. 16575–d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2539.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Ungerer & Co. (Inc.). Plea of guilty. Fine, $10.

ADULTERATION OF OIL OF ANISE.

On March 5, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ungerer & Co. (Inc.), a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on June 3, 1909, from the State of New York into the State of Missouri of a quantity of oil of anise which was adulterated. The product was labeled: "Oil of Star Anise (Oleum Anisi Stellati). S. G. 0.975–0.985 at 25° C. (77° F) C. P.+15°+16° C Guaranteed under the Food and Drugs Act June 30, 1906, Serial Number 521. Ungerer & Co., New York Chicago Philadelphia."

An analysis of the sample of the product by the Bureau of Chemistry of this Department showed the following results: Specific gravity at 25° C., 0.9848; refractive index at 20° C., 1.5480; optical rotation 100 mm 20° C., —0.90°; soluble in 1 volume of 95 per cent alcohol; soluble in 5 volumes of 90 per cent alcohol; phenols absent; lead absent; congealing point, +11.0° C. Oil is not U. S. P. Congealing point is too low. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, oil of anise, and it differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of said shipment and investigation, in that the congealing point of said drug was below 15° C., and was, in fact, 11° C., whereas

said Pharmacopœia provides as a test for oil of anise that its congealing point should not be below 15° C.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 26, 1913.*

2539

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F. & D. No. 4556.
I. S. No. 19839–d.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2540.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Ungerer & Co. (Inc.). Plea of guilty. Fine, $10.

ADULTERATION AND MISBRANDING OF OIL OF CASSIA.

On March 5, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ungerer & Co. (Inc.), a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on March 1, 1912, from the State of New York into the State of Texas of a quantity of oil of cassia which was adulterated and misbranded. The product was labeled: "Oil of cassia 75–80 per cent. Cin. Ald. Ungerer & Co., New York, Technical Guaranteed by Ungerer & Co. under Food & Drugs Act of June 30, 1906. Serial No. 521. 1 lb."

An analysis of a sample of the product made by the Bureau of Chemistry of this Department showed the following results: Specific gravity at 25° C., 1.0579; refractive index at 20° C., 1.5978; optical rotation 100 mm 20° C., +5.41°; soluble in 2 volumes of 70 per cent alcohol; resins present (large amount); copper acetate test, positive; lead acetate test, positive; lead present (large amount); cinnamic aldehyde (by absorption) (per cent), 69.5. Oil is not U. S. P. High rotation. Lead and resins or resin present. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, oil of cassia, and it differed from the standard of strength, quality, and purity as determined by the test laid down in

said Pharmacopœia official at the time of said shipment and investigation, in that the specific gravity of said drug at 25° C. was above 1.055, and was in fact 1.058, whereas said Pharmacopœia provides as a test for oil of cassia that a specific gravity at 25° C. shall be between 1.045 and 1.055; and further, in that the rotation of said drug was more than 1° and was in fact 5.4°, whereas the said Pharmacopœia provides that the rotation of said drug shall not be more than 1°, and said drug contained less than 75 per cent by volume of cinnamic aldehyde, and in fact contained 69.5 per cent, whereas said Pharmacopœia provides that oil of cassia shall contain not less than 75 per cent by volume of cinnamic aldehyde; and further in that said drug contained lead and resin, which are not ingredients of oil of cassia as determined by the test laid down in said Pharmacopœia. Adulteration of the product was alleged for the further reason that other substances, to wit, resin and lead, were mixed and packed therewith in such a manner as to reduce, lower, and injuriously affect its quality and strength; and further in that other substances, to wit, resin and lead, had been substituted in part for the genuine article, oil of cassia, and in that the product contained an added poisonous and deleterious ingredient which might render it injurious to health, to wit, lead. Misbranding was alleged for the reason that the product was labeled as set forth above, so as to deceive and mislead the purchaser thereof, in that said label would indicate that said drug was true oil of cassia, whereas, in truth and in fact, the said drug was crude oil of cassia containing added resin and lead, and in that the label would indicate that said drug contained between 75 per cent and 80 per cent of cinnamic aldehyde, whereas, in truth and in fact, it contained only 69.5 per cent cinnamic aldehyde.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court imposed a fine of $10.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 26, 1913.*

2540

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F. & D. No. 4569.
I. S. No. 18155–d.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2541.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Ungerer & Co. (Inc.). Plea of guilty. Sentence suspended.

ADULTERATION OF OIL OF LAVENDER FLOWERS.

On March 5, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ungerer & Co. (Inc.), a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on March 27, 1912, from the State of New York into the State of California of a quantity of oil of lavender flowers which was adulterated. The product was labeled: "Essence surfine Lavande Fleurs Jeancard Fils Cannes France Ungerer & Co. New York. Serial No. 521 Poide Specifique @ 15° 0.88–0.90 Pouvoir Rotatoire 4°–8° Solubilite dans 1. Alcohol aFo 2–3 Tenneru en ethers 25%."

An analysis of a sample of the product made by the Bureau of Chemistry of this Department showed the following results: Specific gravity at 25° C., 0.8988; refractive index at 20° C., 1.4621; refractive index after extraction with 5 per cent alcohol, 1.4623; soluble in 3 volumes of 70 per cent alcohol; acid number, 0.98; evaporation residue (per cent), 1.63; saponification number residue non-volatile on steam bath, 3.9; esters as linalyl acetate (per cent), 26.59; terpinyl acetate, absent; glyceryl esters, present; Schimmel's test, positive; acrolein test, positive; esters after extraction with 5 per cent alcohol (per cent), 23.61; oil is adulterated with glyceryl esters. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States

Pharmacopœia, to wit, oil of lavender flowers, and it differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of said shipment and investigation, in that the said Pharmacopœia provides as a test for oil of lavender flowers that it shall be a volatile oil distilled from the fresh flowering tops of Lavandula officinalis chaix (fam. Labiatas), whereas it was not a volatile oil distilled from the fresh flowering tops of lavandula officinalis chaix, but was an article containing added glyceryl esters.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 26, 1913.*

2541

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F. & D. No. 4643.
S. No. 1540. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2542.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 5 Barrels and 5 Half Barrels of Syrup. Goods released on bond.

MISBRANDING OF SYRUP.

On October 8, 1912, the United States Attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5 barrels and 5 half-barrels of syrup, remaining unsold and in the original unbroken packages and in possession of Allen & Lewis, Portland, Oreg., alleging that the product had been shipped on or before June 20, 1912, by the National Manufacturing Co., St. Joseph, Mo., and transported from the State of Missouri into the State of Oregon, and charging misbranding in violation of the Food and Drugs Act. The containers were branded: (On one end) "National Mfg Co White Clover Drips St. Joseph"; (On other end in small inconspicuous type) "Guaranteed by the National Mfg Co under the Food and Drugs Act June 30 1906—Serial No. 1014. Corn Syrup Cane Flavor".

Misbranding of the product was alleged in the libel for the reason that the labels thereon were intended to deceive and mislead the purchaser and to convey the impression that the syrup was obtained by draining crystallized sugar, when, in truth and in fact, it was not so obtained, but was made and manufactured by flavoring glucose with a small portion of cane syrup. Misbranding was alleged for the further reason that the label on the product was false and misleading and calculated to deceive the purchaser into the belief that the product was a syrup obtained from draining crystallized sugar, when, in truth and in fact, it contained about 86 per cent of glucose.

On November 16, 1912, the case having come on for hearing, it was ordered by the court that the product should be released to Allen & Lewis upon payment of the costs of the proceeding, amounting to $32.12, and the execution of bond in the sum of $200, in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 27, 1913.*

10453°—No. 2542—13

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F. & D. No. 4707.
S. No. 1550.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2543.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 17 Barrels of Lithia Beer. Decree of condemnation by default. Goods ordered destroyed.

MISBRANDING OF LITHIA BEER.

On October 24, 1912, the United States Attorney for the District of Maine, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 17 barrels of lithia beer remaining unsold in the original unbroken packages at 36 Plum Street, Portland, Me., alleging that the product had been shipped on or about October 7, 1912, by the Suffolk Brewing Co., Boston, Mass., and transported from the State of Massachusetts into the State of Maine, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Guaranteed Ingalls Bros. Lithia Beer. Thirty-one gallons beer, Portland, Maine, Non Intoxicating."

Misbranding of the product was alleged in the libel for the reason that it was an imitation of and offered for sale under the distinctive name of another article, to wit, under the name of lithia beer, when in truth and in fact it was not lithia beer. Misbranding was alleged for the further reason that each barrel was labeled "Lithia Beer," which label was calculated to deceive and mislead the purchaser in that the product was not lithia beer. Misbranding was alleged for the further reason that the barrels were labeled "Non Intoxicating," which label was calculated to deceive and mislead the purchaser thereof, in that the product was not nonintoxicating. Misbranding was alleged for the further reason that the barrels bore a certain statement, to wit, the inscription, to wit, "Lithia Beer," which said statement was false and misleading in that the product contained no lithia. Misbranding was alleged for the further reason that the

barrels bore a certain statement, to wit, the inscription "Non Intoxicating," which said statement was false and misleading in that the product was intoxicating.

On December 2, 1912, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 27, 1913.*

2543

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F. & D. No. 4896.
I. S. No. 3245-d. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2544.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Ungerer & Co. (Inc.). Plea of guilty. Sentence suspended.

ADULTERATION OF OIL OF CAJUPUT.

On March 5, 1913, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Ungerer & Co. (Inc.), a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on July 8, 1911, from the State of New York into the State of Michigan of a quantity of oil of cajuput which was adulterated. The product was labeled: "Oil of cajuput (Oleum Cajuputi) S. G. 0.915–0.925 at 25° C., guaranteed by Ungerer & Co., under the Food and Drugs Act June 30, 1906. Serial No. 521. Ungerer & Co., New York Chicago Philadelphia 8 oz."

An analysis of a sample of the product made by the Bureau of Chemistry of this Department showed the following results: Specific gravity at 25° C., 0.9151; refractive index at 20° C., 1.4682; optical rotation 100 mm. at 20° C.,—1.73°; soluble in 1 volume of 80 per cent alcohol; solution slightly acid to litmus; copper present. Oil is not U. S. P. Copper present. Adulteration of the product was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, oil of cajuput, and differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia official at the time of said shipment and investigation, in that said drug contained copper, which is not one of the ingredients of oil of cajuput, as determined by the test laid down in said Pharmacopœia.

On March 17, 1913, the defendant company entered a plea of guilty to the information and the court suspended sentence.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 27, 1913.*

10453°—No. 2544—13

F. & D. No. 4999.
S. No. 1667. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2545.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 32 Barrels of Vinegar. Decree of condemnation by consent. Goods released on bond.

ADULTERATION AND MISBRANDING OF VINEGAR.

On January 23, 1913, the United States Attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 32 barrels of vinegar, remaining unsold and in the original unbroken packages and in the possession of George M. Ryrie & Co., Alton, Ill., alleging that the product had been shipped in interstate commerce by A. Braun Manufacturing Co., St. Louis, Mo., on or about November 20, 1912, and transported from the State of Missouri into the State of Illinois, and charging adulteration and misbranding in violation of the Food and Drugs Act. The product was labeled: "Manufactured for Geo. M. Ryrie & Co., Alton, Ill. 50—Sugar Vinegar—St. Louis, Mo."

Adulteration of the product was alleged in the libel for the reason that it consisted wholly or in part of distilled vinegar, which had been artificially colored and substituted for and packed in the barrels in imitation of sugar vinegar, so that distilled vinegar and artificial coloring matter had been substituted wholly or in part for sugar vinegar, and so that the product was mixed and colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that the product was branded and labeled as set forth above, which said brand and label bore a statement, design, and device regarding the product and the ingredients and substances contained therein which was false and misleading in that said label

and brand purported to declare and in substance and fact did declare that each of the barrels contained sugar vinegar, when, in truth and in fact, said product consisted in whole or in part of distilled vinegar, artificially colored in imitation of sugar vinegar, and further, in that said product was an imitation of and offered for sale under the distinctive name of sugar vinegar, when, in truth and in fact, it was not sugar vinegar, but an imitation thereof.

On March 15, 1913, the said George M. Ryrie & Co., claimant, having admitted all the material allegations in the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be redelivered to said claimants, upon the payment of all the costs of the proceeding and the execution of bond in the sum of $500, in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 28, 1913.*

2545

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F. & D. No. 5054.
S. No. 1694. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2546.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 75 Cases Evaporated Milk. Decree of condemnation by consent. Goods released on bond.

MISBRANDING OF EVAPORATED MILK.

On or about February 17, 1913, the United States Attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 75 cases, each containing 48 tins of evaporated milk, remaining unsold in the original unbroken packages and in possession of the H. P. Lau Co., Lincoln, Nebr., alleging that the product had been shipped on or about October 23, 1912, by Borden's Condensed Milk Co., St. Charles, Ill., and transported in interstate commerce from the State of Illinois into the State of Nebraska, and charging misbranding in violation of the Food and Drugs Act. The product was labeled: "Blackbird brand, Unsweetened Evaporated milk. This can contains pure, rich milk only, evaporated to the consistency of cream and preserved by perfect sterilization. All disease germs, and those causing milk to ferment, are destroyed by our perfect sterilizing process, therefore, this evaporated milk is an absolutely safe food for all purposes to which milk or cream is adapted. Economical and convenient; always ready for use. Keep the can in a clean place and take the same care that you would with fresh milk and cream. Guaranteed to keep in any climate. Net weight 17 oz."

Misbranding of the product was alleged in the libel for the reason that the contents of each of the packages thereof, as to weight and measure, were not plainly and correctly stated on the outside of each of said packages, in this to wit, the net weight of each of said packages was not 17 ounces, as stated on the label of each of them, but,

in truth and in fact, was but 16.22 ounces, and the product was further misbranded in that the statement "Net weight 17 oz.," appearing on the label of each of the packages, was false and misleading in that it conveyed to purchasers the information that each of the packages contained 17 ounces, whereas, in truth and in fact, each of said packages contained but 16.22 ounces.

On March 17, 1913, the said H. P. Lau Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon payment of all the costs of the proceedings and the execution of bond in the sum of $300, in conformity with section 10 of the Act.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 28, 1913.*

2546

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F. & D. No. 5069.
S. No. 1709. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2547.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 396 Boxes of Oranges. Order of destruction issued by the court upon motion of United States Attorney.

ADULTERATION OF ORANGES.

On February 25, 1913, the United States Attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 396 boxes of oranges remaining unsold in the original unbroken packages on the premises of the Baltimore & Ohio Railroad Co., Baltimore, Md., alleging that the product had been transported from the State of California into the State of Maryland and charging adulteration in violation of the Food and Drugs Act. The product was labeled: "Mutual Brand Washington Navels Grown and packed by Redlands Mutual Orange Co., Redlands, San Bernardino Co., California."

Adulteration of the product was alleged in the libel for the reason that it consisted in part of a decayed and decomposed substance, to wit, decayed and decomposed oranges.

On March 18, 1913, no claimant having appeared for the property, upon motion of the United States Attorney it was ordered by the court that the product should be destroyed by the United States marshal.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 28, 1913.*

10453°—No. 2547—13

F. & D. No. 1350.
I. S. No. 3461-b. Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2548.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Charles H. Dexter. Plea of nolo contendere. Fine, $25.

MISBRANDING OF HEADACHE AND ANTI-PAIN POWDERS.

On April 27, 1910, the United States Attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles H. Dexter, Boston, Mass., alleging shipment by said defendant, in violation of the Food and Drugs Act, on October 29, 1909, from the State of Massachusetts into the State of New York of a quantity of headache and anti-pain powders which were misbranded. The product was labeled: (On package) "Dexters Headache and Antipain Powders. Contains no morphine-cocaine, antipyrin or cathartic medicines. Directions * * * Prepared by Chas. H. Dexter, Druggist, 166 Court. Cor. Bulfinch St., Bowdoin Square, Boston, Mass." (On circular) "In offering these powders to the general public we have implicit confidence in their efficacy not only to relieve all forms of headache, from whatever cause arising, neuralgia, la grippe, colds, painful menstruation, rheumatic pains, &c., but to relieve every ache which human flesh is heir to. We positively guarantee that they do not contain any morphine or other narcotic and consequently will induce no habit."

Analysis of samples of the product by the Bureau of Chemistry of this Department showed the following results:

Weight.	Chloroform—insoluble matter.	Caffein.	Acetanilid.
(a) 0.4888 gram	48.16 per cent	0.0158 gram or 3.23 per cent	48.04 per cent
(b) 0.4770 gram	48.18 per cent	0.0161 gram or 3.36 per cent	47.87 per cent

Sodium salicylate 47.09 per cent.

Misbranding of the product was alleged in the information for the reason that it was labeled and branded so as to mislead a purchaser, that is to say the label set forth above contained a statement regarding the substance, which statement would lead a purchaser to believe that the product would relieve all forms of headache from whatever cause arising—neuralgia, la grippe, colds, painful menstruation, rheumatic pains, etc., and relieve every ache which human flesh is heir to, and that said product did not contain any narcotic which would induce or have a tendency to form a habit, whereas, in truth and in fact, said product would not relieve all forms of headache from whatever cause arising—neuralgia, la grippe, colds, painful menstruation, rheumatic pains, etc., and would not relieve every ache which human flesh is heir to, and said product contained a narcotic which would induce and have a tendency to form a habit. Misbranding was alleged for the further reason that the product contained acetanilid and the containers of the product failed to bear any statement of the quantity or proportion of said acetanilid in said product.

On May 10, 1910, the defendant entered a plea of nolo contendere to the information and the court imposed a fine of $25.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *August 29, 1913.*

2548

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F. & D. No. 1389.
S. No. 514.

Issued October 18, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2549.

SUPPLEMENT TO NOTICE OF JUDGMENT NO. 722.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. 625 Sacks Bleached Flour. Decree of condemnation, forfeiture, and destruction of the District Court of the United States for the Western District of Missouri reversed by the Circuit Court of Appeals for the Eighth Circuit, and case remanded for a new trial. Pending on writ of certiorari in the Supreme Court of the United States.

ALLEGED ADULTERATION AND MISBRANDING OF BLEACHED FLOUR.

On July 22, 1910, the Lexington Mill & Elevator Co., claimants of the 625 sacks of bleached flour that had been found adulterated and misbranded by a jury in the District Court of the United States for the Western District of Missouri, filed notice of appeal by writ of error or appeal or both, to the United States Circuit Court of Appeals for the Eighth Circuit, from the final decree entered in the case on July 6, 1910, in said District Court.

On January 23, 1913, the case having come on for hearing before the Circuit Court of Appeals for the Eighth Circuit, the judgment below was reversed and the case remanded for a new trial, as will more fully appear from the following decision delivered by the Court (Marshall, *D. J.*):

The Lexington Mill and Elevator Company is a corporation of the State of Nebraska and is engaged in the manufacture of flour at Lexington, Nebraska. On April 1, 1910, it shipped from Lexington to B. O. Terry at Castle, Missouri, six hundred and twenty-five sacks of flour manufactured by it. On April 9, 1910, a libel was filed by the United States under the provisions of Sec. 10 of the Food and Drugs Act, 34 Stat. 768, and a warrant of seizure issued, by virtue of which the flour was seized under the claim that it was adulterated and misbranded in violation of the provisions of that Act. The Lexington Mill & Elevator Company appeared as claimant. It averred that it had sold the flour under a guarantee that it was not adulterated within the meaning of the Food and Drugs Act, and that pursuant to that guarantee it had furnished to

the purchaser other flour in lieu of that seized, and had become the owner of the flour in litigation. It was permitted to answer the libel and the case was then tried to a court and jury with the result that the United States had a verdict that the flour was adulterated and misbranded. From the judgment of condemnation rendered on this verdict the claimant prosecutes an appeal and a writ of error. A motion is made to dismiss the appeal and this must be sustained.

The act under which this libel was filed provides in Sec. 10 for the process of libel for condemnation and that "The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States." This did not change the essential character of the action or make it other than an action at law. As a matter of procedure it has to conform "as near as may be to proceedings in admiralty," but a trial by jury at the demand of either party is provided, and a review of the facts so tried by appeal was not expressly granted. The question as to the proper method of review was decided in this Court in the case of United States v. Seven Hundred and Seventy-nine Cases of Molasses (174 Fed. 325). The Supreme Court of the United States has had occasion to pass on the principle involved in cases arising under the Act of July 17, 1862, entitled "An Act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," which provided that the proceedings against the property seized shall be *in rem* and "shall conform as nearly as may be to proceedings in admiralty or in revenue cases." That court held that a writ of error was the only method of review. The appeal in No. 3534 will be dismissed and jurisdiction will be taken of the writ of error in No. 3533.

Before a consideration of the questions arising on the writ of error a more complete statement of the facts is necessary. The claimant in the manufacture of the flour seized uses the Alsop patented process. A complete description of this process may be found in the opinion of this Court in Naylor v. Alsop Process Co. (168 Fed. 911). It is sufficient for the present purpose to say that by it nitrogen peroxide gas is formed by electric discharges. This gas mixed with air is brought into contact with the freshly milled flour, with the result of bleaching it. The method is this; in a small chamber one electrode is fixed; the other is given a reciprocating motion so as to alternately touch and separate from the fixed electrode. A current of high potential is used. The circuit is completed by the contact. Separation of the electrodes results in an arc. The inert nitrogen of the air is oxidized and nitrogen peroxide gas formed. This gas diluted by mixture with air is conveyed to a box or agitator, through which the flour is permitted to fall and the bleaching is at once effected. The chemical reaction seems to be as follows: The nitrogen peroxide gas coming in contact with the moisture of the flour, splits and forms nitric and nitrous acids, both oxidizing agents, but the nitric acid the more powerful. The nitric acid certainly and the nitrous acid probably unite with the coloring matter of the flour and bleach it. Nitrites are formed by the union of the nitrous acid with the bases in the flour and nitrates by the union of the nitric acid with those bases. The nitrates may be disregarded as non-injurious; the nitrites are claimed to be poisonous. The flour seized was subjected to the Griess-Ilsovay test, an extremely delicate test for the detection of the presence of nitrites and was shown to contain nitrites or material reacting as nitrites to the amount of three parts per million. The misbranding is predicated on this. The sacks containing the flour were labeled "L 48, Lexington cream XXXXX, fancy patent.

This flour is made of first quality hard wheat." In fact, the flour was milled from Turkey red wheat. This wheat replanted from year to year gradually degenerates and becomes mixed with a wheat of a yellow color, called locally "yellow berry." This admixture with yellow berry deteriorates the quality of the wheat. The wheat in question contained this yellow berry to the extent of from fifteen to twenty-five per cent of its total quantity. Both Turkey red and yellow berry are hard wheats. This wheat graded as No. 2, and this was the best grade of wheat grown or milled in Nebraska or neighboring states. In other sections of the country wheat grading as No. 1 is grown. There can be milled from the same wheat flour of different grades. That flour which contains the entire flour content of the berry is called "straight flour"; patent flour excludes a part of the flour content; that part of the berry nearest the bran coat containing the greater part of the oil and coloring matter. Clear flour is the residue of the flour content of the wheat after taking out the patent flour. The result is that patent flour is whiter than straight and straight is whiter than clear flour.

The jury found separate verdicts, (1) that the flour seized was adulterated, and (2) that it was misbranded. The Court charged the jury: "It is clear that it was intended by Congress to prohibit the adding to the food of any quantity of the prohibited substance. The fact that poisonous substances are to be found in the bodies of human beings, in the air, in potable water and in articles of food such as ham, bacon, fruits, certain vegetables and other articles does not justify the adding of the same or other poisonous substances to articles of food, such as flour, because the statute condemns the adding of poisonous substances. Therefore, the court charges you that the Government need not prove that this flour or food stuffs made by the use of it, would injure the health of any consumer. It is the character, not the quantity of the added substance, if any, which is to determine this case." This was excepted to and was assigned as error. There was evidence tending to prove that flour containing the percentage of nitrites found in the seized flour, might be injurious to health when used as a food for a considerable period, but this was disputed, and the converse supported by substantial testimony. This was the most stubbornly contested issue in the case, and that it was an issue was recognized by the Government at all stages of the trial.

The part of the statute material to a consideration of the correctness of this instruction is found in Sec. 7 of the Act, which reads:

"Sec. 7. That for the purposes of this act an article shall be deemed to be adulterated: * * * *

"In the case of food:

"First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"Second. If any substance has been substituted wholly or in part for the article.

"Third. If any valuable constituent of the article has been wholly or in part abstracted.

"Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed."

"Fifth. If it contain any added poisonous or other added deleterious ingredients which may render such article injurious to health * * * *."

The instruction complained of referred to the charge in the libel under the fifth subdivision just quoted. The trial judge decided that if the added substance was qualitatively poisonous although in fact added in such minute quantity as to be non-injurious to health that it still fell under the ban of the

statute; and the distinction is sought to be drawn between substances admittedly poisonous when administered in considerable quantities but which serve some beneficial purpose when administered in small amounts, and those substances which it is claimed never can benefit and which in large doses must injure. The distinction is refined. To apply it must presuppose that science has exhausted the entire field of investigation as to the effect upon the human body of these various substances; that nothing remains to be learned. Otherwise the court would be required to solemnly adjudge today that a certain substance is qualitatively poisonous because it can never serve a useful purpose in the human system only to have this conclusion made absurd by some new discovery. There is no warrant in the statute for such a strained construction. The object of the law was evidently (1) to insure to the purchaser that the article purchased was what it purported to be, and (2) to safeguard the public health by prohibiting the inclusion of any foreign ingredient deleterious to health. Hall-Baker Grain Co. *v.* United States (198 Fed. 614). The statute is to be read in the light of these objects, and the words "injurious to health" must be given their natural meaning. It will be observed that this paragraph of the statute does not end with the words "added deleterious ingredient" but as a precaution against the idea embodied in the instruction complained of, it says "which may render such article injurious to health." Without these latter words, it might, with more force, be argued that deleterious and beneficent ingredients are to be divided into two general classes independent of their particular effect in the actual quantities administered, but the possibility of injury to health due to the added ingredient and in the quantity in which it is added, is plainly made an essential element of the prohibition. The investigation does not stop with the consideration of the poisonous nature of the added substance. It is added to the article of food and the statute only prohibits it if it may render such article—the article of food—injurious to health.

In French Silver Dragee Co. *v.* United States (179 Fed. 824), this question was considered by the Court of Appeals of the Second Circuit. In that case adulteration was charged in confectionery by the addition of silver. The article in question was made of sugar and thinly coated with pure silver. The statute declares that confectionery shall be deemed to be adulterated "if it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug." The element of injury to health is not expressed as a qualification of mineral substance. Silver is admittedly a mineral substance and the act of the defendant was within the letter of the prohibition, but the court construing the statute in the light of the evils it was intended to remedy, the objects sought to be accomplished, held that there was implied in this clause relating to confectionery the very limitation expressed in the paragraph relating to food, and as there was no proof that the coating of silver might render the article injurious to health, it did not fall within the ban of the statute. It was there said: "Stated in another way we think that the history of the Act, the objects to be accomplished by it and the language of all its provisions, require that it should be so interpreted that in the case of confectionery as in the case of foods and drugs, the Government should establish with respect to products not specifically named that they either deceive or are calculated to deceive the public or are detrimental to health."

In Friend *v.* Matt (68 J. P. 589), there was under consideration Sec. 3 of 38–39 Victoria, Chap. 63, which reads: "No person shall mix, color, stain, or powder, or alter, or permit another person to mix, color, stain, or

powder any article of food or any ingredient or material so as to render the article injurious to health." In that case the respondent was charged with selling preserved peas, the color of which had been retained by the addition of sulphate of copper. It was contended that as sulphate of copper in substantial quantity was injurious to health, the peas so treated with it were within the statute even if the treated peas were not injurious to health. This view prevailed in the trial court, but the judgment was reversed on appeal, Lord Alverstone, Chief Justice, saying: "I have no doubt that in order to convict under Sec. 3, the article of food must be shown to be injurious to health by the addition of some ingredient."

The instruction complained of eliminated a consideration of any possible injurious effect from the use of the flour as an article of food, and was erroneous. We are not unmindful of the contention that the evidence conclusively shows that flour subjected to the bleaching process is injurious to health in some degree, even if its injurious effect is so slight as to be incapable of observation, and that, hence, the instruction we have found to be error was error without prejudice. This contention is founded upon expert testimony as to the result from the taking of nitrites into the human system. It is said that nitrites taken into the human body act upon the coloring matter of the red corpuscles of the blood so as to change the hemoglobin of the blood into methemoglobin. In the language of one of the chief chemical experts of the Government this effect is thus described:

"In the blood stream there are red corpuscles, invisible to the naked eye, which contain a red coloring substance known as hemoglobin, when not combined with oxygen, and when combined with oxygen forming a dissociable compound, oxyhemoglobin. In respiration, the hemoglobin contained in the red corpuscles of the venous blood is brought into the lungs, where it having an affinity for the oxygen, which is one of the gaseous constituents of the air, combines with the oxygen to form oxyhemoglobin. This oxyhemoglobin contained in the red blood corpuscles is then conveyed, through the arterial system to the various parts of the body, and of the terminals of the arterial system, passing through a mass of tissue, it gives up its oxygen, to oxidize the tissues, or materials that may be in solution there, to form carbon dioxide, and to form water, and this oxyhemoglobin is thereby reduced to the condition of hemoglobin which is returned by the venous system to the lungs, to be again oxygenated. That is where the hemoglobin will again combine with oxygen to form oxyhemoglobin, and a given quantity of hemoglobin may serve to carry a given quantity of oxygen to the system. Now, however, if any of this hemoglobin is converted into methemoglobin, which is a compound of oxygen with hemoglobin, in which the oxygen is more firmly combined than in the case of oxyhemoglobin, although the quantity of oxygen is the same, the oxygen is so firmly attached—combined with the hemoglobin—that the vital processes are not sufficiently strong to separate the oxygen from the hemoglobin, nor to use the oxygen to oxidize the tissue and tissue material, to sustain life, and, consequently, it passes through the circulation to the arterial systems and the venous system, and continues this cycle until, finally, it is destroyed by the liver. Therefore, a certain quantity of the hemoglobin is rendered inefficient. It no longer functionates as a carrier of oxygen to the system, serves, or acts, as a foreign body in the blood circulation, and, therefore, must be removed. As I have said before, an extra strain is placed upon the liver, in order to remove it, and an extra strain is placed upon the red blood marrow, in adults, to regenerate the corpuscles, and to replace the corpuscles of the hemoglobin that have been rendered inactive by the action of nitrite, and the formation of methemoglobin."

It is also said that the continued presence of nitrites in the system does not develop any tolerance on the part of the body or means of neutralizing its normal action. On the other hand, it was proved that no injurious effect had ever been observed from the use of bleached flour although such flour had been largely used. That nitrites in some or greater amounts are frequently present in potable water, bacon, ham, fruits and certain vegetables, and even in the saliva of both adults and children, and no evil result has been detected. That urea usually present in saliva is, when taken into the stomach, a neutralizer of nitrites, and is a method by which nature averts harm from minute quantities of nitrites so constantly taken into the system. In his conflict of evidence it was essentially a matter for the jury to find the fact under proper instructions. Expert testimony is but evidence. In case of dispute the controversy cannot be settled by the judicial knowledge of the court. (U. S. v. McClue, 1 Curtis, C. C. 1–9; U. S. v. Molloy, 31 Fed. 19.) It cannot be held that the evidence was so conclusive in favor of the Government as to warrant the court in withdrawing this issue from the jury.

The Government also claimed that the seized flour was adulterated within the first and fourth subdivisions of Section 7 before quoted in that a substance, viz.: Nitrites or nitrite reacting material had been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength and that it had been thereby colored in a manner whereby damage or inferiority is concealed. The claimant requested a peremptory instruction in its favor on the issues so tendered by the libel, and assigns the refusal to so instruct as error.

The mixture referred to in the first subdivision must be held to include a chemical compound as well as a mechanical mixture. While this does not accord with the scientific definition of a mixture, yet in common acceptation mixtures and compounds are not discriminated. The evil intended to be remedied by the statute is not limited to a mechanical mixture, but is just as potent when the chemical union results from the two substances with the deleterious effect intended to be prevented by the Act. Similarly, the word "colored" must be held to include any artificially produced change in the natural color of the substance "in a manner whereby damage or inferiority is concealed," even if the change is, as in this case, a removing of color. This is the evident intent of the statute. The Act is essentially remedial, and its evident purpose is not to be defeated by any narrowness of construction. Johnson *v.* Southern Pacific Co. (196 U. S. 1). There was evidence that bleached flour did not improve with age in the manner characteristic of unbleached flour, nor did it, as the claimant contended, suddenly take on the condition of properly aged flour which had not been subjected to the bleaching process. That in dough made from bleached flour the gluten never attained the toughness found in dough from unbleached and properly aged flour, and that this toughness was a valuable property in the making of bread. In other words, that as an ultimate result of the mixing of the flour with nitrogen peroxide gas the bread making quality had been injuriously affected. We are not concerned with the opposing testimony. It was for the jury to determine the fact and the court did not err in refusing to peremptorily instruct for the claimant so far as the claim of adulteration was based on the first subdivision before quoted.

The claim of adulteration under the fourth subdivision presents a different question. There is evidence that flour made from new wheat is darker in color than the flour made from wheat which has gone through an incipient fermentation or sweating process in the stack, and second, through a similar process after threshing. This involves time. Also, that freshly milled flour is darker than it subsequently becomes when kept for a certain period of time. That

clear flour is darker than straight flour and straight flour is darker than patent flour. That color is to some extent an index of the quality of the flour, and as such influences the ordinary purchaser. That all grades of bleached flour are whiter than unbleached. In this way the index of color becomes unreliable and a purchaser may take the bleached straight for unbleached patent flour. With the evidence on which the inferiority of the bleached flour is claimed, this it is contended, brings the case within the fourth subdivision of Sec. 7. Opposed to this, it appears that color is at best an uncertain index of quality, and that dealers in flour use other means to ascertain quality. That the color of bleached flour is distinct from that of unbleached flour; the dead white of the bleached is contrasted with the cream white of the unbleached. That bleaching of flour does not obliterate the differences in appearance of different grades of bleached flour. That while patent flour obtains a higher price in the market than straight flour this is not due to any superiority in patent flour from a nutritious standpoint but is due to the fact that bread baked from it is whiter in appearance and, hence, more pleasing to the eye. This esthetic result can be obtained by a certain process of conditioning the wheat and milling the flour. Was it the intention of the statute that this process should have a monopoly? Whiteness in flour is a desirable end in and of itself. Its connection with flour of any particular grade is purely incidental. We are not persuaded that by the bleaching process flour is so colored as to conceal inferiority, or that by it, flour is adulterated within the intent of subdivision four of Sec. 7 of this Act.

The court submitted to the jury the charge contained in the libel that this flour was misbranded, and in effect, instructed the jury that they should find for the Government if the flour was not a patent flour or was not made from first quality hard wheat. This was excepted to and is assigned as error. The contention of the plaintiff in error, as presented to the trial court by various requests for instructions, is that no evidence was introduced tending to prove that the seized flour was not a patent flour, and that the issue tendered by the libel as to the quality of the wheat only went to the question whether it was hard or soft wheat, and that there was no evidence that the wheat was soft. It will serve no useful purpose to review at length the evidence. It suffices to say that it appears that the seized flour contains ninety per cent of the flour content of the wheat; that there is no fixed standard as to the percentage of the flour content which may be properly termed patent flour. When the process first originated a relatively low percentage was called patent flour; as improvements were made in the methods of manufacture a higher percentage was customarily so labeled. Different mills adopt different standards, varying in accordance with the efficiency of their methods of manufacture. The quality of the wheat milled also enters into the question. The better the wheat the higher the percentage of the flour content that may properly be classed as patent flour. The case of the Government rests entirely on the evidence of some millers that in their opinion no greater percentage than eighty-five per cent can be properly classed as patent flour. This evidence is based upon the experience of those witnesses with different machinery and wheat, and is not predicated upon the claimant's methods of manufacture. There is a concurrence of the witnesses that the term "patent flour" does not connote any fixed or maximum percentage of the flour content of the berry. In other words, by patent flour is meant flour containing less than the total of the flour content of the wheat. Giving those words that signification there was no evidence of falsity, and the claimant was entitled to have that issue withdrawn from the jury by a peremptory instruction in its favor.

It was charged in the amended libel that the seized flour was misbranded in that it was labeled as made of the first quality of hard wheat, whereas, in truth it was made in whole or in part of soft wheat. This charge was denied in the answer. The evidence adduced in its support is that the flour was milled from No. 2 Turkey red wheat and was not of the first quality, but that no soft wheat entered into its composition. The trial court, in substance, instructed the jury that if the wheat was not of the first quality the charge of misbranding was sustained. Fairly construed the libel tendered the issue of soft wheat as distinguished from hard wheat. The pleader assumed that it was incumbent upon him to specify the particular in which the branding was false. If it be permissible to so specify and failing to support the specification, to prove falsity in another particular within the general averment of falsity, then the specification serves but to draw the attention of the defendant from the actual point of controversy and to mislead. It was error to submit the charge of misbranding to the jury.

Errors are assigned on various rulings in the admission of testimony, but as the pages of the record which presented the testimony objected to are not stated in the brief of the plaintiff in error, as required by rule 24 of this Court, we deem it unnecessary to consider them. (Hoge *v.* Magnes, 85 Fed. 355–8.)

The constitutionality of the Food and Drugs Act is attacked by the plaintiff in error and was exhaustively argued. The point of the attack is that the statute as construed by the trial court applied to food products in fact entirely innocuous and which could not possibly be injurious to health nor deceptive. As we have not so interpreted the statute, it is not necessary to express any opinion as to the validity of a statute excluding from interstate commerce harmless food products which are offered for sale without deception.

The judgment below must be reversed and the case remanded for a new trial, and it is so ordered.

On May 10, 1913, there was filed in the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals in this case, and said petition is now pending before the Supreme Court.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *June 3, 1913.*

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F. & D. No. 1463.
I. S. No. 3462–b. Issued October 31, 1913.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2550.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Edgar S. Fossett. Plea of nolo contendere. Nolle prossed.

MISBRANDING OF HEADACHE CAPSULES.

On July 28, 1910, the United States Attorney for the District of Maine, acting upon a report by the Secretary of Agriculture, filed in the Circuit Court of the United States for said district an information against Edgar S. Fossett, Portland, Me., alleging shipment by said defendant, in violation of the Food and Drugs Act, on November 1, 1909, from the State of Maine into the State of New York, of a quantity of headache capsules which were misbranded. The product was labeled: "For Headache. Dr. Freeman's Celery and Caffeine Capsules. Price 25 cents. For Headache of all kinds. Neuralgia, Car-sickness, etc. etc., Directions: Two capsules, if in severe cases, relief does not follow in thirty minutes, repeat. * * * Manufactured by the Freeman Pharmacal Company, Portland, Maine. Guaranteed under the Food and Drugs Act, June 30, 1906. No. 455. Each capsule contains 16/100 of a gm. of Acetanilid."

Analysis of samples of the product by the Bureau of Chemistry of this Department showed the following results: (1) Residue insoluble in chloroform, 22.64 per cent; caffein, 4.72; acetanilid, 65.08; (2) residue insoluble in chloroform, 22.88 per cent; caffein, 4.55; acetanilid, 65.13. Misbranding of the product was alleged in the information for the reason that the package or label thereof bore a statement, to wit, the inscription "Celery and Caffeine Capsules" which was misleading in that the contents of the package were composed of substances which contained a large quantity of acetanilid and a small quantity of caffein, celery seed, and other material, and for the further reason that the package was labeled and offered for sale under the name of an article other than that contained in the said package, to wit, said package was labeled and offered for sale as celery and caffein capsules, whereas, in truth and in fact, it was not

celery and caffein capsules, but was composed of a substance which contained a large quantity of acetanilid and a small quantity of caffein, celery, and other materials.

Thereafter, the case having come on for hearing, a plea of nolo contendere was entered by the defendant, and on November 29, 1912, the information was nolle prossed by direction of the court.

B. T. Galloway,
Acting Secretary of Agriculture.

Washington, D. C., *September 2, 1913.*

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INDEX TO NOTICES OF JUDGMENT 2001 TO 2550.[1]

[Arranged under heads: Foods (p. 3); Beverages, including waters and medicated drinks (p. 11); Drugs (p. 13).]

FOODS.

[1] For index of Notices of Judgment 1–1000, see Notice of Judgment 1000; 1001–2000, see Notice of Judgment 2000; future indexes to be supplementary thereto.

FOODS—Continued.

N. J. No.

Candy, Chocolate dolls:
- Hawley & Hoops 2356
- Hoops, Herman L 2356
- Hoops, Herman W 2356
- Hoops, William F 2356

Candy, Chocolate perfecto chocolate perfectione:
- Wilbur, H. O., & Sons 2317

Candy, Chocolate pipes:
- Hawley & Hoops 2358
- Hoops, Herman L 2358
- Hoops, Herman W 2358
- Hoops, William F 2358

Candy, Chocolate segars:
- Hawley & Hoops 2359, 2360, 2362
- Hoops, Herman L 2359, 2360, 2362
- Hoops, Herman W 2359, 2360, 2362
- Hoops, William F 2359, 2360, 2362

Candy, Chocolate teddy bears:
- Hawley & Hoops 2361
- Hoops, Herman L 2361
- Hoops, Herman W 2361
- Hoops, William F 2361

Candy, Chocolate whistles:
- Hawley & Hoops 2358
- Hoops, Herman L 2358
- Hoops, Herman W 2358
- Hoops, William F 2358

Candy cigars:
- Greenfield's, E., Sons & Co 2172

Candy, Coon faces:
- Ziegler, George, Co 2100

Candy, Ghirardelli's Italian Chocolates:
- Ghirardelli Co 2238

Candy, Honey maples:
- Brown, Frank D 2055
- Sauerston & Brown 2055

Candy, Lukoumia:
- Marcopoulou, A 2076
- Marcoupulos, A 2076

Candy, Lukum:
- Greek Product Importing Co 2070
- Syra Lukum Co 2070

Candy, Maple hearts:
- Rigney & Co 2338

Candy, Peerless cigars:
- Ziegler, George, Co 2099

Candy, Phoenix brand Delmore maples:
- Reinhart & Newton Co 2211

Candy, Phoenix brand maplettes:
- Reinhart & Newton Co 2208

Candy, Pineapple slices:
- Reinhart & Newton Co 2192

Cane sirup. (*See* Sirup, Cane.)

Cassia extract. (*See* Extract, Cassia.)

Catsup. (*See* Tomato ketchup.)

Cheese:
- Barber, A. H., & Co 2432
- Crosby & Myers 2335
- Goyer Co 2432
- Loeb, Sol., & Co 2335
- Zucca & Co 2057

Cheese, Cream:
- Rappel, J. F., & Co 2441

Cheese, Cream, Daisy:
- Barber, A. H., & Co 2432
- Goyer Co 2432

Cheese, Cream, Mayflower:
- Stevens, S. J., Co 2301

Cherries, Dried:
- Payne, H. P., & Bro 2369

Cherries, Maraschino:
- Dalidet, Geo., & Co 2328
- Delapenha, R. U., & Co 2328
- Dubreuil, E., & Fils 2392

Cherry jelly, Wild. (*See* Jelly, Cherry, Wild.)

Chestnuts:
- Moran, E. P 2371

Chocolate beans:
- Chase, G. W., & Son Mercantile Co 2528

Chocolate brownies (candy):
- Hawley & Hoops 2353, 2354, 2358
- Hoops, Herman L 2353, 2354, 2358
- Hoops, Herman W 2353, 2354, 2358
- Hoops, William F 2353, 2354, 2358

Chocolate candy:
- Hawley & Hoops 2357
- Hoops, Herman L 2357
- Hoops, Herman W 2357
- Hoops, William F 2357

Chocolate caramel sticks (candy):
- Johnston, Robert A., Co 2084

Chocolate cigarettes (candy):
- Hawley & Hoops 2355
- Hoops, Herman L 2355
- Hoops, Herman W 2355
- Hoops, William F 2355

Chocolate dolls (candy):
- Hawley & Hoops 2356
- Hoops, Herman L 2356
- Hoops, Herman W 2356
- Hoops, William F 2356

Chocolate perfecto chocolate perfectione (candy):
- Wilbur, H. O., & Sons 2317

Chocolate pipes (candy):
- Hawley & Hoops 2358
- Hoops, Herman L 2358
- Hoops, Herman W 2358
- Hoops, William F 2358

Chocolate segars (candy):
- Hawley & Hoops 2359, 2360, 2362
- Hoops, Herman L 2359, 2360, 2362
- Hoops, Herman W 2359, 2360, 2362
- Hoops, William F 2359, 2360, 2362

Chocolate teddy bears (candy):
- Hawley & Hoops 2361
- Hoops, Herman L 2361
- Hoops, Herman W 2361
- Hoops, William F 2361

Chocolate whistles (candy):
- Hawley & Hoops 2358
- Hoops, Herman L 2358
- Hoops, Herman W 2358
- Hoops, William F 2358

FOODS—Continued.

FOODS—Continued.

N. J. No.

Extract, Jamaica ginger. (*See* Extract, Ginger, Jamaica.)
Extract, Lemon:
American Pure Coffee & Spice Co 2320
Blumenthal Bros 2047
Cincinnati Extract Works 2241
Durkee, E. R., & Co 2513
French, J. M 2513
Haynor Mfg. Co 2103
Jaburg Bros 2527
Kelley-Whitney Extract Co 2065
McNeil & Higgins Co 2108
Mayer, Emil I 2241
Parker-Browne Co 2381
Royal Remedy & Extract Co 2143
Serv-us Pure Food Co 2320
Webster, William A., Co 2533
Western Buyers Association 2248
Extract, Lemon peel:
Hickok, John N., & Son 2135
Extract, Nutmeg:
Cincinnati Extract Works 2244
Fowler, J. E., Co 2112
Mayer, Emil I 2244
Extract, Orange:
American Products Co 2200
Cincinnati Extract Works 2243
Hickok, John N., & Son 2135
Kelley-Whitney Extract Co 2065
Mayer, Emil I 2243
Mihalovitch, Albert 2200
Mihalovitch, Clarence 2200
Royal Remedy & Extract Co 2143
Extract, Orange, Blood:
Cincinnati Extract Works 2243
Mayer, Emil I 2243
Extract, Peach:
Sethness Co 2470
Extract, Peppermint:
American Products Co 2146
Bunch, Alonzo E 2298
Mihalovitch, Albert 2146
Mihalovitch, Clarence 2146
Stern, Moses R 2116, 2459
Weideman Co 2094
Extract, Pineapple:
Webster, William A., Co 2533
Extract, Pistachio:
American Products Co 2146
Cincinnati Extract Works 2241
Mayer, Emil I 2241
Mihalovitch, Albert 2146
Mihalovitch, Clarence 2146
Extract, Strawberry:
Fuchs, Herman 2495
Webster, William A., Co 2533
Extract, Tonka and vanilla:
Hudson Mfg. Co 2340, 2350
Extract, Vanilla:
American Products Co 2145
Cincinnati Extract Works 2241
Durkee, E. R., & Co 2237, 2513

N. J. No.

Extract, Vanilla—Continued.
Ferris-Noeth-Stern Co. (Inc.) 2194
French, James M 2237, 2513
Fuchs, Herman 2494
Hickok, John N., & Son 2135
Hudson Mfg. Co 2340, 2467, 2468
Kelley-Whitney Extract Co 2065
Mayer, Emil I 2241
Mihalovitch, Albert 2145
Mihalovitch, Clarence 2145
Royal Remedy & Extract Co 2143
Steinwender-Stoffregen Coffee Co 2198
Van Duzer Co 2162
Warner-Jenkinson Co 2130
Extract, Vanilla, nonalcoholic:
Nonalcoholic Extract Co 2308
Extract, Vanilla and tonka:
Hudson Mfg. Co 2340, 2350
Extract, Violet:
American Products Co 2146
Mihalovitch, Albert 2146
Mihalovitch, Clarence 2146
Extract, Wintergreen:
Cincinnati Extract Works 2242
Jacquin, Charles, & Cie 2529
Mayer, Emil I 2242
Fassett's golden drip sirup, cane flavor:
Farrell & Co 2165
Feeds, Barley:
Brown Grain Co 2453
Merchants Elevator Co 2452
Van Dusen Harrington Co 2451
Feeds, Corn and oats:
Ohio Hay & Grain Co 2168
Feeds, Corn chops:
House, R. J., & Co 2512
Western Grain Co 2512
Feeds, Cracked corn:
Ohio Hay & Grain Co 2168
Feeds, Kennebec mixed:
Indiana Milling Co 2500
Feeds, Oats, No. 2 mixed:
City Hay & Grain Co 2171
Feeds, Royal:
Southern Fibre Co 2114
Feeds, Schumacher special horse:
Matthews, George B., & Son 2077
Quaker Oats Co 2077
Feeds, Wheat bran:
Dunlop Milling Co 2387
Figs:
Armas, Fillipachi & Co 2157
Ohio Bkg. Co 2087
Virginia Fruit & Produce Co 2157
Fish:
Zucca, E 2427
Fish. (*See also* Flat lake fish; Herring; Sardines; White fish; White lake fish.)
Flat lake fish:
Maull, Louis, Cheese & Fish Co 2063

FOODS—Continued.

FOODS—Continued.

FOODS—Continued.

Polar bear brand sirup: N. J. No.
Bliss Syrup Refining Co 2085
Preserves, Blackberry-apple:
St. Louis Syrup & Preserving Co 2398
Preserves, Strawberry-apple:
St. Louis Syrup & Preserving Co 2397
Prunes:
Atlas Preserving Co 2150
Kickabush Grocery Co 2294
Merchants & Miners Transportation Co 2144
Pulp, Tomato. (*See* Tomato pulp.)
Raspberries:
Sanfacon, Florent 2223
Raspberry jelly. (*See* Jelly, Raspberry.)
Rice:
Allen Bros. Co 2379
Talmage, John S., Co. (Ltd.) 2097
Royal feed:
Southern Fiber Co 2114
Saccharine, Malt:
Ferris-Noeth-Stern Co. (Inc.) 2195
Salad dressing, Cupid brand:
Dodson-Braun Manufacturing Co 2307
National Pickle & Canning Co 2307
Salad dressing and meat sauce:
Durkee, E. R., & Co 2104, 2513
French, James M 2104, 2513
Salmon:
Pacific American Fisheries Co 2400
Salt:
Liverpool Salt & Coal Co 2391, 2446
Sardines:
Cohn-Hume Fisheries Co 2251, 2325
Schumacher special horse feed:
Matthews, George B., & Son 2077
Quaker Oats Co 2077
Scudder's Canada sirup:
Scudder Syrup Co 2473
Segars, Chocolate (candy):
Hawley & Hoops 2359, 2360, 2362
Hoops, Herman L 2359, 2360, 2362
Hoops, Herman W 2359, 2360, 2362
Hoops, William F 2359, 2360, 2362
Sirup, Cane, Wild forest brand:
Johnson, F. N., Co 2332, 2333
Sirup, Corn:
Scully, D. B., Co 2383
Sirup, Corn and cane:
Long Syrup Refining Co 2390
Mason-Ehrman Co 2390
Sirup, Dixie sweet:
Dixie Syrup Co. (Inc.) 2203
Sirup, Drips:
Long Syrup Refining Co 2390
Mason-Ehrman Co 2390
Sirup, Golden drip, cane flavor:
Farrell & Co 2165
Sirup, Grenadin:
Bettman-Johnson Co 2201
Theller, C. A., Co 2477
Sirup, Maple: N. J. No.
Bay State Maple Syrup Co 2525
Graby, Augustus 2429
Marx, M. A 2429
Tice, Claudius M 2525
Sirup, Maple, Dixie sweet:
Dixie Syrup Co. (Inc.) 2203
Sirup, Maple, Native purity pure:
Johnson, F. N., Co 2331, 2333
Sirup, Maple, Wild forest brand:
Johnson, F. N., Co 2332, 2333
Sirup, Pancake brand:
Bliss Syrup Refining Co 2085
Sirup, Pancake drip:
Bliss Syrup Refining Co 2318
Sirup, Polar bear brand:
Bliss Syrup Refining Co 2085
Sirup, Scudder's Canada:
Scudder Syrup Co 2473
Sirup, Sorghum:
Scully, D. B., Syrup Co 2080, 2471
Sirup, Squirrel brand table:
Hubinger, J. C., Bros. Co 2231
Roth, Adam, Grocery Co 2231
Sirup, Wedding breakfast cane and maple sugar:
Farrell & Co 2205
Sirup, White clover drips:
National Mfg. Co 2542
Sirup, Wild forest brand:
Johnson, F. N., Co 2330
Sorghum, Loverin's:
Scully, D. B., Syrup Co 2471
Sorghum sirup. (*See* Sirup, Sorghum.)
Spinach:
Farren, J. S., & Co 2206
Squirrel brand table sirup:
Hubinger, J. C., Bros. Co 2231
Roth, Adam, Grocery Co 2231
Stock feed. (*See* Feeds.)
Strawberries, Preserved:
Malcolm, J. B., & Co 2163
Morey Mercantile Co 2163
Strawberry-apple preserves:
St. Louis Syrup & Preserving Co 2397
Strawberry extract. (*See* Extract, Strawberry.)
Strawberry jelly. (*See* Jelly, Strawberry.)
Strawberry oil:
Sethness Co 2470
Succotash:
Augusta Canning Co 2212
Sugar corn:
Atlantic Canning Co 2134
Sunshine Suffolk biscuit (arrowroot):
Loose-Wiles Biscuit Co 2053
Teddy bears, Chocolate (candy):
Hawley & Hoops 2361
Hoops, Herman L 2361
Hoops, Herman W 2361
Hoops, William F 2361

FOODS—Continued.

Thyme, Oil of: N. J. No.
- Rockhill & Vietor 2518
- Vietor, Carl 2518

Tomato conserve:
- Coroneos Bros 2490

Tomato ketchup:
- Atlas Preserving Co. (Inc.) 2196
- Ayars, B. S., & Sons Co 2187
- Edler, Fred C 2522
- Flaccus, E. C., Co 2049
- Grant, H. E 2257
- Huss Edler Preserve Co 2522, 2523
- Indiana Tomato Seed Co 2257
- Keokuk Pickle Co 2423
- McMechen Preserving Co 2167
- National Pickle & Canning Co 2311, 2312, 2423, 2521
- Neosho Canning Co 2461
- Schwabacher Bros. & Co 2148
- Van Lill, S. J., Co 2176, 2351

Tomato paste:
- Kansas Canning Co 2487
- Philadelphia Pickling Co 2456 (suppl. to 1744)

Tomato pulp:
- Cooke Shanawolf Co 2214
- Crothersville Canning Co 2233
- Foote, D. E., & Co 2442
- Gypsum Canning Co 2119
- Knightstown Conserve Co 2120, 2124
- Martin & Lehr 2322
- Philadelphia Pickling Co 2496
- Seneca, S. J 2508
- Seymour Canning Co 2233

Tomato sauce:
- Da Prato, Angelo 2127

Tomatoes:
- Assau, W. F., Canning Co. (Inc.) 2197
- Berkman, Aaron 2245
- Farren, J. S., & Co. (Inc.) 2174
- Roberts Bros 2067, 2202
- South Lebanon Preserving Co 2300
- Van Lill, S. J., Co 2245

Tonka and vanilla extract. (*See* Extract, Tonka and vanilla.)

Turpentine:
- Bang, Charles 2506
- Barclay Naval Stores Co 2507
- De Forest, S. V. B 2507
- Emaus, C. C 2507
- Southern States Turpentine Co 2450
- U. S. Turpentine & Linseed Oil Co 2109

Vanilla extract. (*See* Extract, Vanilla.) N. J. No.

Vanilla jelly. (*See* Jelly, Vanilla.)

Vanilla and tonka extract. (*See* Extract, Vanilla and tonka.)

Vinegar:
- Braun, A., Mfg. Co 2524, 2545
- Central City Pickle Co 2220, 2236
- Dawson Bros. Mfg. Co 2185, 2530, 2532
- Haarmann Vinegar & Pickle Co 2093, 2399
- Henning, William, Co 2083
- Hughes, R. M., & Co 2388
- Morgan-Abbot-Barker Co 2505
- New England Vinegar Works 2514
- Ohio Cider Vinegar Co 2464
- Place, M. H. & M. S 2170, 2492
- Rowse, A. E 2514
- Ryrie, George M., & Co 2545
- Schloss Crockery Co 2061
- Spielman Bros. Co 2469, 2472, 2474

Vinegar compound, Apple:
- Sharp-Elliott Mfg. Co 2158

Violet extract (*See* Extract, Violet.)

Wedding breakfast cane & maple sugar syrup:
- Farrell & Co 2205

Wheat:
- Lull, Charles R 2125
- Metzler, Claudius E 2125
- Mueller, E. B., & Co 2125

Wheat bran:
- Dunlop Milling Co 2387

Whistles, Chocolate (candy):
- Hawley & Hoops 2358
- Hoops, Herman L 2358
- Hoops, Herman W 2358
- Hoops, William F 2358

White clover drips:
- National Mfg. Co 2542

White fish:
- Maull, Louis, Cheese & Fish Co 2063

White lake fish:
- Dickman, O. H., & Co 2412

Wild cherry jelly. (*See* Jelly, Cherry, Wild.)

Wild forest brand syrup:
- Johnson, F. N., Co 2330, 2332, 2333

Wintergreen extract. (*See* Extract, Wintergreen.)

BEVERAGES.

Absinthe: N. J. No.
- Arrow Distilleries Co 2403

Apple brandy. (*See* Brandy, Apple.)

Apricot cordial. (*See* Cordial, Apricot.)

Atlas carbonated soda (beer):
- Bachman, H. E 2182, 2183, 2184
- Wheeling Specialty Co 2182, 2183, 2184

Bavarian malt extract:
- Heim, Ferd, Brewing Co 2258
- Imperial Brewing Co 2258
- Kansas City Breweries Co 2258

Beer: N. J. No.
- Monumental Brewing Co 2073

(Beer) Atlas carbonated soda:
- Bachman, H. E 2182, 2183, 2184
- Wheeling Specialty Co 2182, 2183, 2184

Beer, Dove brand:
- Gerst, William, Brewing Co 2227

Beer, Lithia:
- Suffolk Brewing Co 2543

Beer, Pilsener style:
- Obermeyer & Liebmann 2229

BEVERAGES—Continued.

BEVERAGES—Continued.

DRUGS.

DRUGS—Continued.

DRUGS—Continued.